GLOBAL FORUM ON TRANSPARENCY AND EXCHANGE OF INFORMATION FOR TAX PURPOSES

Peer Review Report
Phase 1
Legal and Regulatory Framework

SAINT LUCIA

OECD

Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Saint Lucia 2012

PHASE 1

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About the Global Forum

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 jurisdictions which participate in the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the international standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, which has been incorporated in the UN Model Tax Convention.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. Fishing expeditions are not authorised but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

All members of the Global Forum, as well as jurisdictions identified by the Global Forum as relevant to its work, are being reviewed. This process is undertaken in two phases. Phase 1 reviews assess the quality of a jurisdictions' legal and regulatory framework for the exchange of information, while Phase 2 reviews look at the practical implementation of that framework. Some Global Forum members are undergoing combined – Phase 1 plus Phase 2 – reviews. The Global Forum has also put in place a process for supplementary reports to follow-up on recommendations, as well as for the ongoing monitoring of jurisdictions following the conclusion of a review. The ultimate goal is to help jurisdictions to effectively implement the international standards of transparency and exchange of information for tax purposes.

All review reports are published once approved by the Global Forum and they thus represent agreed Global Forum reports.

For more information on the work of the Global Forum on Transparency and Exchange of Information for Tax Purposes, and for copies of the published review reports, please refer to *www.oecd.org/tax/transparency* and *www.eoi-tax.org*.

Executive Summary

1. This report summarises the legal and regulatory framework for transparency and exchange of information in Saint Lucia.

2. The international standard which is set out in the Global Forum's Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information is concerned with the availability of relevant information within a jurisdiction, the competent authority's ability to gain timely access to that information, and whether that information can be effectively exchanged with its exchange of information (EOI) partners. In 2005, Saint Lucia committed to implementing the international standards of transparency and information exchange, and since then has taken significant steps towards developing its legal framework and network of information exchange agreements in line with that commitment. Notwithstanding the progress already made, the report identifies some areas, particularly with respect to obligations to maintain reliable accounting information, where improvements are needed to more effectively implement the international standard.

3. Relevant entities and arrangements are generally subject to requirements to keep relevant ownership- and identity information, with the exception of companies formed in CARICOM or OECS member states which are carrying on business in Saint Lucia. For entities linked to the international financial services sector namely International Business Companies, International Partnership and International Trusts, there are not binding obligations to maintain all relevant accounting records, for a minimum 5 year period. Recommendations are made for Saint Lucia to address these shortcomings, and the essential element of the international standard concerning accounting information is found to be not in place. Bank information is required to be kept as a result of the obligations found in Saint Lucia's anti-money laundering regime.

4. Access to information by the competent authority for EOI purposes is found to be in place, but with some improvements needed. Saint Lucia's access powers are granted under the Income Tax Act, which contains both general powers, and specific powers for bank information. Some uncertainty exists on the existence of a domestic tax interest in the general access power, while there is no domestic tax interest required to access bank information.

A recommendation is made for Saint Lucia to clarify that uncertainty, as well as a recommendation in respect of the broad scope of attorney-client privilege under domestic law. Appeal rights and safeguards apply in Saint Lucia and are compatible with effective information exchange.

5. Saint Lucia's network of EOI agreements includes tax information exchange agreements, bilateral and multilateral tax agreements. In total, the network of in force agreements covers 28 jurisdictions. The terms of Saint Lucia's agreements are generally in line with the international standard, however a recommendation is made to take into account the effect of possible limitations in its domestic access laws and in respect of the CARICOM tax treaty, where some provisions in signatories' domestic laws prevent effective exchange. Saint Lucia's network of EOI agreements covers all relevant partners and confidentiality requirements in its agreements and domestic law protect the information exchanged. A recommendation is made for Saint Lucia to address the broad scope of attorney-client privilege in its domestic law, which may impact its ability to meet its obligations under the EOI agreements.

6. The main gap where Saint Lucia's legal and regulatory framework is found not to be in place, relates to the availability of accounting information. International business companies, International Partnerships and International Trusts are not required to maintain adequate accounting records. While these entities and arrangements are required to have AML-regulated Service Providers who are obliged to maintain accounting information relating to these entities, these obligations do not meet the full requirements under the international standard.

7. Saint Lucia's progress in the areas where recommendations have been made, as well as its actual practice in exchange information with its EOI partners, will be considered in its Phase 2 review which is scheduled to commence in the second half of 2013. In the interim, a follow up report on the steps undertaken by Saint Lucia to implement the recommendations made in this report should be provided to the PRG within six months from the adoption of this report

Introduction

Information and methodology used for the peer review of Saint Lucia

8. The assessment of the legal and regulatory framework of Saint Lucia was based on the international standards for transparency and exchange of information as described in the Global Forum's *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information For Tax Purposes*, and was prepared using the Global Forum's *Methodology for Peer Reviews and Non-Member Reviews*. The assessment was based on the laws, regulations, and exchange of information mechanisms in force or effect as at March 2012, other materials supplied by Saint Lucia, and information supplied by partner jurisdictions.

9. The *Terms of Reference* break down the standards of transparency and exchange of information into 10 essential elements and 31 enumerated aspects under three broad categories: (A) availability of information; (B) access to information; and (C) exchange of information. This review assesses in Saint Lucia's legal and regulatory framework against these elements and each of the enumerated aspects. In respect of each essential element a determination is made that either: (i) the element is in place; (ii) the element is in place but certain aspects of the legal implementation of the element need improvement; or (iii) the element is not in place. These determinations are accompanied by recommendations for improvement where relevant. A summary of the findings against those elements is set out on pages 73-76 of this report.

10. The assessment was conducted by a team which consisted of two assessors and a representative of the Global Forum Secretariat: Ms. Maria Graça Pires, Tax Officer of the International Relations Department, Ministry of Finance of Portugal; Mr. Graham Hunt Senior Policy Analyst, Inland Revenue Department of New Zealand; and Caroline Malcolm from the Global Forum Secretariat.

Overview of Saint Lucia

Governance, economic context and legal system

11. Saint Lucia is an island located in the south-eastern Caribbean, in the Eastern Caribbean Sea. It is part of the Lesser Antilles and is located northeast of the island of Saint Vincent, northwest of Barbados, and south of Martinique. It covers a land area of 616 km^2 and has an estimated population of 161 557 (July 2011 est.).[1] English is the official language in Saint Lucia and its capital is Castries. The currency is the East Caribbean Dollar (ECD)[2]. The Country is a member of the Eastern Caribbean Currency Union (ECCU) whose members are Anguilla, Antigua and Barbuda, Dominica, Grenada, Montserrat, Saint Kitts and Nevis, Saint Lucia and Saint Vincent and the Grenadines. Saint Lucia is also a member of the Caribbean Community (CARICOM), with the other 14 members being Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, Montserrat, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname, and Trinidad and Tobago.

12. Through the 17th and 18th century, Saint Lucia was alternately under British and French control. In 1814, it was declared a British colony; in 1967, it was granted self-government; and, in 1979, Saint Lucia became independent. Today, Saint Lucia remains a member of the Commonwealth.

13. Saint Lucia is a constitutional monarchy whose written constitution establishes a parliamentary democracy system of governance modelled on the Westminster system of England. The constitution guarantees each individual's fundamental rights and provides for the separation of powers between the executive, the parliament, and the judiciary. Reflective of its history, Saint Lucia's legal system has been described as hybrid, although shares more similarities with other common law jurisdiction, with the legal framework consisting mainly of common law (including English common law) complemented by legislation enacted locally by Saint Lucia's Parliament.

14. The Head of State is the British Monarch who is represented in the island by the Governor General. The head of the government is the Prime Minister who is appointed by the Governor General. The Prime Minister usually is the leader of the majority party or coalition. The Deputy Prime Minister is also appointed by the Governor General. With other key members of the executive branch of government, they form part of the cabinet.

15. The legislature is composed of a bicameral Parliament. The upper chamber is the Senate, made up of 11 seats (six members appointed on the

1. *https://www.cia.gov/library/publications/the-world-factbook/geos/st.html*.
2. As at January 2012, 1 ECD = 0.37 USD *www.xe.com*.

advice of the Prime Minister, three on the advice of the leader of the opposition, and two after consultation with religious, economic, and social groups). The lower chamber is the House of Assembly composed of 17 seats. Members of the Senate and the House of Assembly are appointed for five year terms.

16. Saint Lucia's legal system is based on English common law with the United Kingdom's Privy Council being the final court of appeal. Below the Privy Council, the legal system has a three-tiered judiciary set out in hierarchal order as follows: (i) the Eastern Caribbean High Court; (ii) the Eastern Caribbean Court of Appeal; (iii) the Court of Summary Jurisdiction; and (iv) the Magistrates' Courts.

17. The Eastern Caribbean Supreme Court (comprising the High Court and Court of Appeal) is a superior court of record for the Organisation of Eastern Caribbean States (OECS) with unlimited jurisdiction in each member State. The nine members of the OECS are: Anguilla, Antigua and Barbuda, British Virgin Islands, Commonwealth of Dominica, Grenada, Montserrat, Saint Lucia, St. Kitts and Nevis, and St. Vincent and the Grenadines. The headquarters of the ECSC are in Castries, Saint Lucia.

18. In addition to the ECSC, the Caribbean Court of Justice (CCJ), established in 2003, is the judicial institution for CARICOM. In its original jurisdiction, the CCJ interprets and applies the treaty of Chaguaramas (which establishes the Caribbean Community).

19. Deriving from the English legal system, Saint Lucia's legal framework is predominantly a common law system (including English common law) and relevant legislation is enacted by Saint Lucia's parliament. The interpretations and precedents of English courts have persuasive authority in Saint Lucia, but yield to decided authority made by Saint Lucia's own judicial system. The legal system is unitary and is subject to Saint Lucia's Constitution, which is the supreme law of the country. After the Constitution, the hierarchy of legislation in Saint Lucia is ordered as follows: the Acts passed by parliament, including ordinances such as the Civil Code Ordinance and international agreements which are given effect through parliamentary approval; and subsidiary legislation, which can be in the form of regulations, statutory rules or orders.

20. Saint Lucia has a GDP of USD 1.798 billion, which equates to USD 11 200 per capita. The services sector (mainly tourism-related) is the greatest contributor to GDP at 76.7%, of which the financial services sector makes up 14.7%. At December 2010, Saint Lucia had 180 regulated financial services entities, which includes insurance companies, mutual funds, banks and registered agents. In addition to services, the key economic sectors are industry (18.3%) and agriculture (4.9%). Predominantly, the country has remained an agricultural centre, dedicated to producing tropical commodities, and most notably bananas. Apart from export that has played an important role

in the country's economic growth since the half of the twentieth century, tourism is today Saint Lucia's main source of income. After a decade of decline, in 2010 Saint Lucia experienced an upturn in tourism, with stay-over visitors reaching record numbers, at 305 937 people for the year. At the same time, international financial services have continued to develop.

21. Saint Lucia's main trading partners are Brazil, the United States, and the other CARICOM countries, in particular Trinidad and Tobago. External direct investments in Saint Lucia (that is, from countries outside CARICOM and the ECCU) derive mainly from Canada, the United States, the United Kingdom, Venezuela, and Hong Kong (China).

Overview of commercial laws and other relevant factors for exchange of information

22. In Saint Lucia, companies can be formed under either the Companies Act or the International Business Companies Act (IBC Act). For the purposes of carrying out international insurance business only, an IBC can be formed as an Incorporated Cell Company (s4, International Business Companies Amendment Act 2006). Each Incorporated Cell Company is an IBC which is "linked" to individual cells, and each cell itself considered to be an IBC (s3, International Business Companies (Amendment) Act 2006).

23. Partnerships may be formed and registered under either the Civil Code, or the International Partnerships Act. Trusts can be formed under the common law which is recognised in the Civil Code (art. 916A) or created as an International Trust and registered under the International Trusts Act.

24. As at January 2012, in Saint Lucia there were:

- 9 390 companies formed under Saint Lucia's laws, which includes 4 500 international business companies;
- 120 external companies carrying on business in Saint Lucia;[3]
- 40 partnerships registered under the Commercial Code;
- 0 International Partnerships; and
- 87 International Trusts.

3. An "external company" is any firm or other body of persons, whether incorporated or unincorporated, that is formed under the laws of a country other than Saint Lucia or another member State of the Caribbean Community (CARICOM) or the Organisation of Eastern Caribbean States (OECS) (s551, Companies Act). There are 60 entities which are carrying on business in Saint Lucia and which are formed under the laws of one of the member states of CARICOM or the OECS.

25. IBCs and international partnerships are not permitted to carry on business with persons resident in Saint Lucia, or to hold any interest (other than the lease of an office) in immovable property situated in Saint Lucia. International trusts may not be settled by a person who is resident of Saint Lucia at the time of creation of the trust, or at any time the settlor contributes further property to the trust.

26. IBCs formed under the IBC Act include as at January 2012: two International Insurance Companies, five International Incorporated Cells companies, nine Incorporated Cells (each of which is considered as a separate IBC), seven international Banks, 10 Private Mutual Funds, one International Public Mutual Fund, four International Public Fund Administrators/ Managers, 17 Registered Agents, and three Registered Trustees.

Overview of the financial sector and relevant professions

27. St. Lucia's financial services sector is regulated by the Financial Sector Regulation Authority (FSRA, previously known as the Financial Sector Supervision Unit or FSSU). The FSRA is part of the network of Eastern Caribbean regulators within the Eastern Caribbean Currency Union (ECCU). The enabling legislation creating the FSRA has been enacted, with the commencement order passed. Once the Board of Directors of the FSRA has been appointed, and staffing arrangements finalised, the FSRA will assume full authority from the FSSU, for the regulation of the financial services sector.

28. The banking sector across the ECCU is regulated by the Eastern Caribbean Central Bank (ECCB), with supervision on a day-to-day basis falling to national regulators being the FSRA in Saint Lucia. In Saint Lucia these obligations are implemented under the Banking Act 2006. The non-banking financial sector is regulated and supervised by the relevant national regulators, although efforts to harmonise these areas in the ECCU region continue.

29. The FSRA will have responsibility for licensing and supervision of the financial services sector, which includes insurance, banking, mutual funds, agents, and trustees as well as other money services businesses.

30. The regulatory legislation does not itself impose ownership and identity obligations; however some relevant accounting record obligations are specified. On the other hand, Saint Lucia's anti-money laundering (AML) regime establishes obligations on regulated financial service entities as well as on persons carrying on certain other business activities to retain ownership, identity, and accounting information in respect of the persons with whom they do business.

31. The obligations of the AML regime are regulated and supervised by the Financial Intelligence Authority (FIA) which is established under the Money Laundering (Prevention) Act (MLPA). Persons subject to the AML

requirements ("AML Service Providers") are described in Schedule 2 of the MLPA and include:

- All regulated financial service entities including
  - international mutual funds,
  - international banks,
  - international insurance companies,
  - registered agents (including persons acting as nominee directors, shareholders or company officers), and
  - trustees.
- Company formation and management service providers;
- Custody service entities;
- Securities broking companies;
- Lawyers; and
- Accountants.

32. The MLPA, the Money Laundering (Prevention) (Guidance Notes) Regulations and the Proceeds of Crime Act are the key elements of the AML framework in establishing obligations for AML Service Providers to keep ownership, identity, and accounting information.

General information on the taxation system

33. St. Lucian tax system includes both direct and indirect taxes, with income tax being the most significant tax in terms of amount levied. Indirect taxes include custom duties, hotel accommodation tax and travel tax. Capital gains are not taxed and a value-added tax is expected to be implemented in September 2012. Stamp duty on property transfers and property taxes are also levied. The Inland Revenue Department, a department of the Ministry of Finance, is in charge of the administration and collection of the majority of taxes and duties. Revenue from taxes and duties represent 32.6% of Saint Lucia's GDP (2010 estimate).

34. The Income Tax Act governs the administration of income tax and defines the scope of persons "chargeable to tax", all persons to whom chargeable income has accrued, covering persons tax-resident in Saint Lucia on their worldwide income, and non-residents in respect of Saint Lucian source income accrued directly or indirectly. The corporate tax rate is equivalent to the highest personal income tax rate at 30%.

35. Tax residence for entities and arrangements is defined in section 2 of the Income Tax Act:

- Companies will be tax resident if they are either incorporated in Saint Lucia, or which are controlled and managed from Saint Lucia;
- A partnership is not a taxable entity, and partners are taxed on the basis of their tax-residence.
- Trusts will be tax resident if they are "established in Saint Lucia". Saint Lucia has advised that this means a trust "expressed to be subject to the laws of Saint Lucia" which is also the definition applied in section 51(3) of the International Trust Act. For such trusts, the trustee will be taxable on income accrued to the trust, in the event there are no presently-entitled beneficiaries.

36. However under section 51(5) of the International Trusts Act, there is exemption to the provisions of the Income Tax Act in respect of International Trusts and trusts established in Saint Lucia. The same exemption from the provisions of the Income Tax Act applies to International Partnerships (s101, International Partnerships Act). Where the trust has a qualifying trustee (an IBC or person registered under the Registered Agent and Trustee Licensing Act) wherever resident, the provisions of the Income Tax Act shall not apply to any property which is the subject of the Saint Lucia trust, or the income or gains thereon, or to the trustees of the Saint Lucia trust, or to the non-resident settlors or beneficiaries thereof except income or gains arising or derived from Saint Lucia or property situate in Saint Lucia.[4]

37. There are also exemptions from tax for certain types of entities. Under s109 of the IBC Act, an IBC can elect to be tax-exempt, or to pay tax at a rate of 1%. Electing to pay income tax at the rate of 1%, allows the IBC to benefit from the provisions of the CARICOM agreement. Electing to be tax-exempt, the IBC is relieved of any obligation to file an annual information return under the Income Tax Act. International Partnerships and International Trusts are tax exempt, as are any distributions made to non-resident partners or beneficiaries. International Partnerships are also tax-exempt, under section 101 of the International Partnerships Act. For International Trusts to obtain tax-exempt status, the terms of the International Trust deed must expressly prohibit the ownership of real property situated in Saint Lucia and

4. For these purposes, the following items are not considered to be income or gains arising or derived from Saint Lucia nor considered to be property situate in Saint Lucia: shares in an international business company; dividends, distributions, payments or other transfers from an international business company; rights or property of an international business company; or property transferred from another Saint Lucia trust.

expressly exclude residents as beneficiaries (s51, International Trusts Act). However, where an International Trust accrues income from sources inside Saint Lucia other than ordinary bank interest or income from portfolio securities investments, that income will be subject to tax (s51, International Trusts Act).

38. Under section 2 of the Income Tax Act, a permanent establishment is defined to mean "a fixed place or premises through which the business of a person is wholly or partly carried on" and includes a place of management, a branch, or an office. A person is defined to include an individual, a trust, the estate of a deceased person, a company, a partnership, and every other juridical person.

39. Even where a person is not liable to tax in Saint Lucia, they may still be subject to the obligations imposed by the Income Tax Act to file an annual return and/or to keep certain information including accounting records.

40. Free trade zones (FTZs) may be created in Saint Lucia, pursuant to the Free Zones Act No. 10 of 1999. Presently, one FTZ has been created, in Vieux Fort, which is managed by Saint Lucia's Air and Sea Ports Authority. In the FTZ, investors may establish business and conduct trade and commerce outside of the national customs territory, and such businesses are also granted a 5-year income tax holiday. Business activities can be conducted entirely within the FTZ, or between the FTZ and other countries. The laws pertaining to the FTZ do not allow for the establishment of any types of entities or arrangements other than those provided for generally under Saint Lucia's laws.

International exchange of information for tax purposes

41. In Saint Lucia, the exchange of information for tax purposes (EOI) is governed principally by the terms of the tax information exchange agreements (TIEAs) which Saint Lucia has concluded with its EOI partners, the legislation which incorporates those agreements into domestic law, and the Income Tax Act which grants, in section 60, the Minister of Finance with the power to conclude such agreements.

42. In December 2005, Saint Lucia committed to meeting the international standards of transparency and exchange of information for tax purposes. Its network of signed agreements that include EOI provisions now covers 31 jurisdictions, with 28 of the agreements in force. This includes TIEAs, a double tax convention with Switzerland as well as the multilateral CARICOM tax treaty, which it has signed together with ten other CARICOM member states.

Recent developments

43. Saint Lucia anticipates that a value-added tax will be implemented into law in September 2012. The VAT would be levied at 15% and would replace a number of existing indirect taxes currently in effect, such as the consumption tax.

44. The parliament is currently considering the International Tax Cooperation Bill, which is a single act outlining the procedure relevant to Saint Lucia's exchange of information under its EOI agreements. It is anticipated that the legislation will be passed and enter into force before June 2012.

45. On 2 April 2012, the Companies (Amendment) Regulations 2012 was approved by the Cabinet, and was published and entered into effect on 11 April 2012. The Regulation established an annual return to be completed by external companies carrying on business in Saint Lucia, requiring the provision of information relating to such companies' shareholders. This Regulation is further discussed in Part A of this report.

Compliance with the Standards

A. Availability of Information

Overview

46. Effective exchange of information requires the availability of reliable information. In particular, it requires information on the identity of owners and other stakeholders as well as information on the transactions carried out by entities and other organisational structures. Such information may be kept for tax, regulatory, commercial or other reasons. If such information is not kept or the information is not maintained for a reasonable period of time, a jurisdiction's competent authority may not be able to obtain and provide it when requested. This section of the report describes and assesses Saint Lucia's legal and regulatory framework for availability of information.

47. The legal bases to ensure the availability of relevant information in Saint Lucia are found in commercial laws, tax laws and the linked regulatory and anti-money laundering regimes. In respect of companies, the companies formed under Saint Lucia's laws as well as foreign companies with a connection to Saint Lucia and nominees acting on behalf of other people in Saint Lucia are subject to obligations to keep ownership information. However, for companies formed under the laws of a CARICOM or OECS member state and carrying on business in Saint Lucia, there are no obligations for ownership information on those entities to be kept. For partnerships, the Income Tax Laws as well as the anti-money laundering regime establish requirements for all partnerships to keep identity information on their partners. This is similarly the case for International Trusts, however some ordinary trusts are not subject to obligations, beyond common law fiduciary duties which could

not be verified in the Phase 1 review, to keep information on the identity of settlors. Overall, element A.1 on ownership and identity information is found to be in place, and a recommendation is made in respect of companies carrying on business in Saint Lucia which are formed under the laws of a CARICOM or OECS member state.

48. In respect of accounting information, the income tax law establishes obligations to keep accounting records, including underlying records for a minimum six year period, for all persons carrying on business in Saint Lucia. However, some tax-exempt entities are also exempt from these record-keeping obligations, namely International Business Companies (IBCs), International Partnerships and International Trusts. In respect of those three types of entities and arrangements, the legal framework does not establish binding obligations for all relevant accounting records to be kept. There are 4 500 IBCs operating in Saint Lucia as at January 2012 and 87 International Trusts and there is a recommendation made to ensure that accounting records and underlying information is kept for a minimum of five years. Element A.2 on accounting records is found to be not in place as a result of these deficiencies.

49. Finally, financial institutions carrying on banking activities are regulated, and subject to Saint Lucia's anti-money laundering regime. This ensures that there are sufficient requirements in respect of account information, including related financial and transaction information for all account holders Element A.3 is therefore found to be in place.

A.1. Ownership and identity information

Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities.

Companies (ToR 5 A.1.1)

50. Saint Lucian law provides for the creation of companies under either the Companies Act (domestic companies), or the International Business Companies Act (IBC Act). The types of companies which can be formed are:

- Companies with share capital. A type of domestic company formed under the Companies Act, these can be either ordinary or public companies.
- Companies without share capital (non-profit). A type of domestic company which is formed under the Companies Act, with the permission of the attorney-general and for a socially useful purpose.

5. *Terms of Reference to Monitor and Review Progress Towards Transparency and Exchange of Information.*

- International business companies. Formed under the IBC Act, IBCs must be created for the purpose of carrying out business outside of Saint Lucia, and can elect to pay income tax at 1% or be tax-exempt.

51. The Companies Act also provides for the registration of external companies which are carrying on business within Saint Lucia. An "external company" is any firm or other body of persons, whether incorporated or unincorporated, that is formed under the laws of a country other than Saint Lucia or another member State of the Caribbean Community (CARICOM) or the Organisation of Eastern Caribbean States (OECS) (s551, Companies Act). In this context, "carrying on business" means (s338, Companies Act):

- business is regularly transacted from an office in Saint Lucia established or used for that purpose;
- the company establishes or uses a share transfer or share registration office in Saint Lucia; or
- the company owns, possesses or uses assets situated in Saint Lucia to obtain or seeking to obtain profit or gain from such assets, whether directly or indirectly.

52. There is no registration requirement for companies which are carrying on business in Saint Lucia incorporated in one of the member states of CARICOM or OECS. Saint Lucia has advised that under the Caribbean Community (Movement of Factors) Act, such companies shall enjoy a right of establishment in Saint Lucia, and accordingly such companies may incorporate as domestic companies. It is not clear how these companies would incorporate as domestic companies, and whether any such incorporation is obligatory prior to carrying out business in Saint Lucia. Saint Lucia has further advised that it is proposed to implement a system of registration for companies formed in these jurisdictions however the relevant draft legislation is still under consideration.

Information required to be provided to government authorities

53. The Companies and Intellectual Property Office is the Companies Registrar. It is responsible for maintaining a register of every company that is incorporated or registered under the Companies Act. This will include domestic companies and external companies, but not IBCs (which have a dedicated register, described below). The Companies Registrar must keep all documents received for a minimum of 6 years from receipt (s515, Companies Act).

54. For incorporation, domestic companies must submit their articles of incorporation to the Registrar; however these are not required to include shareholder identity information. Domestic companies are required to submit an annual return to the Registrar (s194, Companies Act) in the prescribed

form found in schedule 3 of the Companies Act (Form 28, Schedule 3, Companies Act). The form requires a list of persons holding shares (legal owners) in the company as at 31 December, and of persons who have held shares in the company at any time since the date of the last return or (in case of the first return) of the incorporation or continuance of the company, including their names and addresses and an account of the shares so held.

55. The Registrar of International Business Companies maintains a register of companies formed under the IBC Act. Under that Act, the IBC's registered agent must submit the IBC's memorandum and articles of incorporation to the Registrar. These documents include the name and address of the registered agent, but do not require the provision of identity information regarding the shareholders. An IBC is required to maintain a registered agent and registered office in Saint Lucia at all times, and to notify the Registrar of any changes thereto (ss38-41, IBC Act).

56. External companies are required to register with the Registrar of Companies before commencing business in Saint Lucia (s340, Companies Act). The information required to be provided upon registration does not include any shareholder identification information (s344, Companies Act). However, an external company is required to file an annual return (s356, Companies Act). The prescribed form (Form 24, Schedule 3 Companies Act) requires the same information as for the domestic companies annual information return: a list of persons holding shares (legal owners) in the company as at 31 December, and of persons who have held shares in the company at any time since the date of the last return or (in case of the first return) of the incorporation or continuance of the company, including their names and addresses and an account of the shares so held. By order published in the Gazette, the Attorney-General may exempt external companies from their obligations under the Companies Act (s339, Companies Act). Saint Lucia has advised that no such exemptions have been granted to date and this should be monitored in Saint Lucia's Phase 2 review.

57. There is no clear requirement for companies carrying on business in Saint Lucia which were incorporated in one of the member states of CARICOM or OECS, to submit ownership information to the Registrar of Companies.

Ownership information required to be held by companies

58. The name of every person incorporating a domestic company must be entered in the company's register of members upon the company's registration. All domestic companies must maintain a register of shareholders which includes the name and last known address of the shareholder (s177, Companies Act).

59. The definition of a shareholder in section 105(1)(c) provides that a shareholder includes:

> a person in whose favour a transfer of shares has been executed but whose name has not been entered in the register of members of the company or, if 2 or more such transfers have been executed, the person in whose favour the most recent transfer has been made

60. This possibility is also envisaged under s195(5) which concerns transfers of shares, and section 195(4) states that beneficial ownership of the share transfers on the delivery of the written transfer and the transferor's share certificate, and not on the register of the transferee's interest in the register of shareholders.

61. These provisions may suggest that it is possible for a person to be a shareholder, even when not named on the register of members maintained by the company and Saint Lucia should clarify this position. However, there is a specific provision that for the purpose of giving notice of shareholders meeting and exercising voting rights at that meeting, share transfers must be registered (s123, Companies Act). On balance, given that domestic companies are required to indicate the name of their shareholders in their annual return to the Companies Registrar, they must in practice keep such information.

62. Also, for domestic public companies, there is a requirement to maintain a register identifying persons who have a "substantial shareholding" in the company, under s184 of the Companies Act. A person is considered to have a substantial shareholding if they hold, by themselves or by their nominee, shares in the company which entitle them to exercise at least 10% of the unrestricted voting rights at any general meeting of shareholders.

63. Non-profit companies are subject to the provisions of the Companies Act that apply to domestic companies with regards to incorporation, management, membership, record keeping, and financial disclosure obligations(s326, Companies Act).

64. IBCs are required to maintain a register of shareholders, including their names and addresses and the dates on which they became and ceased to be a member. An IBC can elect to file the shareholder register with the Registrar of Companies (and once filed, must continue to update the Registrar's record of the shareholders), but are not required to do so (s119, IBC Act). While IBCs are permitted to delete from the share register information on persons who are no longer shareholders (s28, IBC Act), the registered agent of the IBC will be subject to the AML regime and required to keep ownership information for the IBC for a minimum period of seven years.

65. For external companies, there are no obligations under the Companies Act for the company itself to maintain a list of shareholders itself, however to comply with the obligations to file an annual return of information with the Registrar of Companies, which includes identity information on shareholders this information would need to be kept.

66. Companies formed in a CARICOM or OECS member state and carrying on business in Saint Lucia are not subject to any clear requirements to keep information on their owners, and Saint Lucia should clarify the ownership information obligations to which these entities are subject.

Income tax law

67. Companies must nominate a principal person who is responsible for meeting their obligations under the Income Tax Act (sections 93, Income Tax Act). All persons, including domestic and external companies that are chargeable to tax under the Income Tax Act must register with the Comptroller of Inland Revenue and file an annual return of income. However, the annual income tax return does not require companies to identify their owners.

68. Under section 109 of the IBC Act, IBCs may elect either to pay 1% income tax, or to be exempt from income tax. Where they have elected to be exempt from income tax, they are not required to register with the Comptroller or to file a return of income.

Anti-Money Laundering regime

69. Saint Lucia's anti-money laundering (AML) regime establishes obligations on regulated financial service entities as well as persons carrying on certain other business activities to retain ownership, identity, and accounting information in respect of the persons with whom they do business. The persons subject to the AML requirements ("AML Service Providers") are set out in Schedule 2 to the Money Laundering (Prevention) Act (MLPA) and are described in the Introduction to this report.

70. Certain types of entities and arrangements are required to engage an AML Service Provider, namely a registered agent. This includes IBCs, International Partnerships, as well as any entity regulated as an international mutual fund, international bank, or international insurance company under the laws of Saint Lucia. Professional trustees, including all trustees of International Trusts, and also professional nominees are also subject to the AML regime.

71. The Financial Services Unit is responsible for ensuring compliance by AML Service Providers with the MLPA. In addition, AML Service Providers which are regulated financial service entities are subject to a

licensing regime managed by the Financial Services Supervision Unit, whose licensing obligations require compliance by the licensee with their obligations under the AML regime.

72. The obligations to maintain relevant ownership, identity and accounting information under the AML regime are described in the Money Laundering (Prevention) Act (MLPA). Pursuant to section 15, AML Service Providers are required to take "reasonable measures" to determine the true identity of the person seeking to or carrying out a transaction. Relevant transactions are those involving the formation of a business relationship; a one-off transaction (or series of transactions) involving ECD 10 000 or more; or where there is knowledge or suspicion of money laundering (s15(c), MLPA). Where satisfactory evidence is not produced, the AML Service Provider must not proceed further with the transaction.

73. Where the account holder appears to be acting on behalf of another person, as a trustee, nominee, agent or otherwise, reasonable measures shall be taken to verify the identity of that other person (s15(f-g), MLPA). However, in the case of accountholder whose identity has already been established, there is no ongoing obligation to verify their identity in the course of further transactions (s15(j), MLPA).

74. Additional client identity verification measures are required in some circumstances and are described in section 17 of the MLPA. There is no ongoing obligation to verify their identity in the course of further transactions (s15(j), MLPA) except where there is doubt about the veracity of previously obtained identity information. Section 16(h) of the MLPA requires all records to be kept in a legible, retrievable form, and a person who fails to comply with that obligation commits an offence, with fines ranging from ECD 100 000 to ECD 500 000, or imprisonment for 7-15 years.

75. Best practice in respect of the AML obligations are described in the AML Guidelines in the Schedule to the Money Laundering (Prevention) (Guidance Notes) Regulations (MLPGNR). Although certain parts of the AML Guidelines note that they are not "mandatory or exhaustive" (see for example paragraph 118). However there appear to be enforcement measures for non-compliance although it would be beneficial if Saint Lucia clarified the binding status of the guidelines and the relationship with the penalties in the Regulations. Regulation 2(2) of the MLPGNR provides that failure to adhere to the provisions of the AML Guidelines gives rise to liability for a fine not exceeding ECD 1 million. These are supported by the provisions of the principal Act, the MLPA, which requires in section 16 that an AML Service Provider comply with any guidelines issued by the FIA, which includes the AML Guidelines.

76. The AML Guidelines describe the "know your client" obligations at paragraph 70 and following, the specific identity information measures to be taken are described:

- for individuals, they should include the full name and actual residential address of the person.
- for corporate entities: the most recent annual return filed with the Registrar of Companies (which includes shareholder identity information for domestic companies and registered foreign companies, but not necessarily for IBCs), the names and addresses of "the beneficial owner/s and/or the person/s whose instructions the signatories to the account are empowered to act"; and identification documents from at least two corporate directors and account signatories.

77. Once a business relationship is established, the AML Service Provider should keep all relevant identity and transaction records for a minimum seven-year period (paragraph 170).

78. In summary, AML Service Providers are required to keep relevant ownership and identity information in respect of companies for whom they act.

Ownership information held by nominees

79. Persons carrying out a business of providing nominee services (that is, professional nominees) are regulated under Saint Lucia's AML regime and are subject to the obligations described above in respect of relevant transactions. Consequently, a nominee shareholder is required to take reasonable measures to determine the true identity of the persons for whom they act.

80. A nominee that is not acting by way of business is not subject to the AML regime. It is not clear whether such nominees, who would comprise primarily of persons performing services gratuitously or in the course of a purely private non-business relationship, are significant in terms of numbers or the assets they hold. The materiality of this gap in practice will be further examined in the course of Saint Lucia's Phase 2 review.

81. In addition to the requirements of the AML regime, each person with a substantial shareholding (defined as having at least 10% of the unrestricted voting rights) in a domestic company, whether directly or through nominees, is to give notice in writing to the company stating his name and address and giving full particulars of the shares held by him or his nominee (naming the nominee) by virtue of which he is a substantial shareholder (s181, Companies Act). That person is required to do so within 14 days after they become aware that they are a substantial shareholder. When they cease to be a substantial shareholder, the person must give notice in writing to the company stating

their name and the date on which they ceased to be a substantial shareholder of the company. The company is required to keep a register of all such filings. As the obligation here rests on the substantial shareholder themselves however, it is not clear whether these provisions will consistently ensure the availability of identity information for substantial shareholders.

82. Therefore, professional nominees are required to know the identity of the person for whom they act. Also, where a shareholder of a domestic company (which does not include IBCs) holds a "substantial" shareholding, they will be required to notify the company which will include providing the name of the nominee.

Conclusion

83. Domestic companies are required to keep share registers of their members and file ownership information on an annual basis with the Registrar. IBCs are required to keep a share register up to date although IBCs can delete the identity details of former members from their share register as soon as they cease to be members. However, information on shareholders must also be kept by its registered agent for a minimum of 7 years under the AML regime.

84. External companies carrying on business in Saint Lucia are required to file ownership information on an annual basis with the Registrar. For companies incorporated under the laws of a member state of CARICOM or the OECS, which are carrying on business in Saint Lucia, there are no express obligations to ensure ownership information is available and Saint Lucia should clarify the obligations to which these entities are subject. For professional nominees, there is an AML regime obligation to know the identity of the person for whom they act. For all nominees, there is an obligation to identify the nominee where they are act as a "substantial" shareholder, so there is only a small class of non-professional nominees for whom identity obligations on the person for whom they act, may not apply.

Bearer Shares (ToR A.1.2)

85. Companies incorporated under the Companies Act are not permitted to issue bearer shares or bearer share certificates (s29(2), Companies Act). There is no similar express prohibition under the IBC Act. However the Act does provide for shares to be issued as registered shares (s40(1)(a)), it does not make any provision for the issuance of bearer shares and it requires that all shareholders must be identified in the annual return filed with the Companies Registrar.

Partnerships (ToR A.1.3)

86. Saint Lucian law allows for the creation of domestic partnerships (either ordinary or limited) and international partnerships (either general or limited).

87. Partnerships are defined as relationship "between persons carrying on a business in common with a view of profit", under article 21 of the Commercial Code, Chapter 244. Ordinary partnerships are governed by the Commercial Code, and each partner has unlimited liability in respect of the partnership's obligations (art. 28, Commercial Code). Limited partnerships are partnerships formed in the manner described in articles 64 to 72 of the Commercial Code, and must be registered otherwise will be deemed to be an ordinary partnership (art. 65). A limited partnership must have at least one general partner who has unlimited liability and at least one limited partner (which may be a body corporate) whose liability is limited to the amount of their capital contribution and who may not participate in the management of the partnership (art. 65 and 67, Commercial Code).

88. International Partnerships (IPs) which can be either International General Partnerships (IGPs) or International Limited Partnerships (ILPs) are partnerships registered under the International Partnerships Act (IP Act) and subject to its provisions. They are permitted to only carry on business with non-residents (except for incidental business activity) and are not allowed to own interests in immovable property in Saint Lucia, other than a lease of property for use as an office. Saint Lucia has advised that presently there are no IPs formed under the IP Act.

Ownership information held by government authorities

89. Ordinary partnerships are not required to be formed by deed, however they must register with the Registrar, being the Registrar of Companies and provide a written statement including the names of all partners and the date of the commencement of the partnership (art. 20, Commercial Code). There is no express obligation for ordinary partnerships to keep this information up to date if there is a change of the partners in the partnership.

90. Limited partnerships must be registered with the Registrar (the Registrar of the Supreme Court) by providing information including the partnership's principal place of business and the full name of each of the partners indicating which are the general and limited partners (art. 68, Commercial Code). Any change to this information must be notified by signed statement delivered to the Registrar within seven days (art. 69, Commercial Code).

91. Each IP is required to maintain a registered agent (subject to the AML regime) and registered office in Saint Lucia (s25, IP Act). An IP is

formed by the execution of articles which must be provided to the IP's registered agent. The registered agent is then required to provide to the Registrar (s8 and s14, IP Act) a memorandum which will include the name and address of the registered agent and registered office. For IPs, the registrar is the Registrar of International Business Companies (s6, IP Act). For IGPs, there is no obligation to file the names of any partners with the Registrar. For ILPs, the full names and addresses of the general partners are required to be included in the memorandum filed with the Registrar. Any changes to that memorandum, including changes to the identity information of the general partners, must be notified to the Registrar (ss14 and 16, IP Act).

92. The wilful contravention by an IP of the obligation to keep a registered office and registered agent in Saint Lucia is an offence, liable on conviction to a fine not exceeding ECD 500 (s25(3), IP Act).

Ownership and identity information required to be held by partnerships

93. There is no specific requirement imposed on an ordinary partnership to hold ownership and identity information on its partners, other than in the original partnership agreement required to be filed with the Registrar. However, no person may be introduced to the partnership without the consent of all other partners (art. 43(7), Commercial Code). There is also a requirement for all partnership books to be kept at the partnership's place of business, with every partner having a right to access those books as they think fit (art. 43(9), Commercial Code). However it is not clear what information is required to be kept in the partnership books. There is also an obligation that all partners are bound to render true and full information of all things affecting the partnership to the other partners (article 47, Commercial Code). For an ordinary partnership constituted by deed, any person within to retire from the partnership must give written notice (art 45, Commercial Code).

94. There is an obligation on limited partnerships to keep partnership "books" (art. 67(1)(a), Commercial Code). While there is no statement in the Commercial Code on what information such books must contain, in order to comply with the obligation to advise the Registrar of any changes in the partners, limited partnerships must be subject to an implicit obligation to know such information.

95. There is no specific requirement imposed on an IGP to hold ownership and identity information on its partners. For ILPs, under section 87 of the IP Act, a Register of Contributions must be kept by the general partners recording the name, address, and amounts of the contributions of each partner, with this information to be kept up to date within 21 days of any change. Further, the addition of any limited partners must be recorded in the articles of the ILP (s68, IP Act), as well as any assignment of any existing partnership interest (s78, IP Act).

Anti-Money Laundering regime

96. All IPs are required to have a registered agent, who will be AML Service Providers subject to Saint Lucia's AML regime. Section 15 of the MLPA requires AML Service Providers to take "reasonable measures" to determine the true identity of the person seeking to or carrying out relevant transactions. Where satisfactory evidence is not produced, the AML Service Provider must not proceed further with the transaction. Further detail on the AML regime is found in the *Companies* section of Part A.1 of this report.

97. The AML Guidelines describe the "know your client" obligations at paragraph 70 and following, the specific identity information measures to be taken are described:

- for partnerships: identify those partners and managers "relevant to the application for business" in accordance with identity verification guidelines for individuals. In the case of a limited partnership, the general partner should be treated as the verification subject. Limited partners need not be verified unless they are significant investors.

98. Once a business relationship is established, the AML Service Provider must keep all relevant identity and transaction records for a minimum 7 year period (paragraph 170).

Income Tax Law

99. Partnerships are not taxed at the partnership level (s21, Income Tax Act), but "every partnership", excluding International Partnerships, is required to file an annual return of income (s84(2), Income Tax Act). Each partnership must appoint a "precedent partner" who must be notified to the Commissioner, and who has responsibility for meeting the partnership's obligations under the Income Tax Act (s94, Income Tax Act). The annual income return form for Partnerships requests the names and addresses of the partners in the partnership. Non-declaration of information which is requested in the return can render the partnership liable to penalties under section 133 of the Income Tax Act.

100. However there is an exemption to the provisions of the Income Tax Act for all International Partnerships, under section 101 of the International Partnerships Act as described in the Introduction to the report. This includes an exemption from income tax for all International Partnerships, as well as any payments made by the IP to a non-resident and any capital gain realised with respect to an interest in an international partnership held by a non-resident.

Conclusion on partnerships

101. The Income Tax Act establishes obligations on every partnership, except for International Partnerships, to provide identity information on each partner, and which must be updated on an annual basis. For International Limited Partnerships, the IP Act also requires identity information all partners (general and limited) to be kept. The AML regime requires the IPs registered agent to know the identity of all general partners of a partnership (which will include all the partners in an International General Partnership). Therefore, in all instances there is an obligation to ensure that identity information on all partners of relevant partnerships is maintained.

Trusts (ToR A.1.4)

102. Trusts can be created in Saint Lucia as:

- Ordinary trusts: which are trusts formed under and subject to the common law (including English common law – article 916A, Civil Code) regarding trusts as well as Saint Lucia's Civil Code; or
- International trusts: which are trusts registered under the International Trust Act 2006 (Trust Act), and which are subject to that Act, the common law and the Civil Code, with the provisions of the Trust Act to prevail over any inconsistency with the common law or Civil Code. The settlor and beneficiaries may not be a resident of Saint Lucia at the time the trust is settled, or when property is transferred into the trust.

103. For ordinary trusts, the trust deed must be in writing (art. 916A, Civil Code) and the trusts' assets can include immovable property located in Saint Lucia.

104. For International Trusts, the trust deed must be in writing, signed by the settlor or their nominee and by the registered trustee, and the beneficiary(s) must be identified by name or ascertainable by class or relationship in the trust deed (s3, Trust Act). The trust property must not include any immovable property in Saint Lucia, or any interest in such property. The Trust Act provides that trusts, which contain certain provisions that may otherwise be invalid under English common law, are valid. That is, a trust where the settlor retains considerable control over the trust, including power to revoke or amend the trust, to be a beneficiary of the trust (including as the sole beneficiary), to direct, remove or appoint a trustee, protector or advisor (s18, Trust Act). The trust may also be revocable if so specified in the trust deed (s16, Trust Act).

Trust ownership and identity information held by government authorities

105. There is no obligation to register an ordinary trust, although Saint Lucia has advised that it is possible to register the deed establishing the ordinary trust in the Register of Deeds and Mortgages.

106. International trusts must be registered with the Registrar, who is the Registrar for International Business Companies (s5, International Trust Act). In January 2012, there were 87 International Trusts registered in Saint Lucia. Upon registration, the registered trustee must complete the prescribed form which requires the disclosure of the trustee's name and address as well as a copy of the trust deed. Other identity information, namely the identity of any other trustees, the settlor or the beneficiary, is not required to be provided upon registration (unless it is included in the trust deed).

107. Where a trustee of a trust (ordinary or international) is a corporation, they will be subject to the Trust Corporation (Probate and Administration) Act (TCPAA). Under section 3 of the TCPAA, in order to act as a trustee, a company must have the approval of the Governor-General. The TCPAA does not establish any requirements to keep identity information regarding the trust.

Trust ownership and identity information required to be retained by the trust

108. For both ordinary and International Trusts, the common law creates fiduciary duties on trustees to have full knowledge of all the trust documents, to act in the best interests of the beneficiaries, and to only distribute assets to the correct persons. These obligations implicitly require all trustees to identify all the beneficiaries of the trust since this is the only way the trustee can carry out his duties properly. If the trustees fail to meet their common law obligations they are liable for legal action for breach of their fiduciary duties. The extent of these common law obligations could not be established during the Phase 1 review. An in-depth assessment of the effectiveness of the common law requirements with respect to availability of identity information pertaining to settlors, trustees and beneficiaries of trusts will be considered as part of Saint Lucia's Phase 2 review.

109. All persons in Saint Lucia that are acting as trustees in their professional capacity must be licensed under the Registered Agents and Trustee Licensing Act (RATLA) and are subject to the AML regime. Section 15 of the MLPA requires AML Service Providers to take "reasonable measures" to determine the true identity of the person seeking to or carrying out relevant transactions. Where satisfactory evidence is not produced, the AML Service Provider must not proceed further with the transaction. Further detail on the AML regime is found in the *Companies* section of Part A.1 of this report.

110. The AML Guidelines describe the "know your client" obligations at paragraph 70 and following. The specific identity information measures to be taken in respect of trusts are described: the trustee should verify the identity of a settlor or guarantor or any other person adding assets to the trust, in accordance with the identity verification guidelines for individuals. In particular, the following minimum information should be obtained: (i) for settlors: name and business, trade or occupation; and (ii) for beneficiaries: name, address and other identity information such as passport number.

111. Once a business relationship is established, the AML Service Provider must keep all relevant identity and transaction records for a minimum seven-year period (paragraph 170).

112. In case of an International Trust, section 60 of the International Trust Act also imposes requirements to keep the following information:

- a copy of the instrument creating the trust and copies of any other instrument amending or supplementing such information;
- a register in which the following information is set out—
  - the name of the settlor and the name of the beneficiary or the beneficiaries and the names of the trustee or trustees and where applicable the name of the protector,
  - if a purpose or charitable trust, a summary of the purposes of the trust and the name of the protector(s) of the trust, and
  - such documents as are necessary to show the true financial position of the trust, which shall be current as of one month following the close of each fiscal quarter.

Income tax law

113. A trust will be tax-resident in Saint Lucia if the trust is "established in Saint Lucia" (s2, Income Tax Act), which Saint Lucia has described as meaning all trusts which are subject to the laws of Saint Lucia. The trust's representative taxpayer (the trustee) is responsible for the filing of income returns and the doing all other things required under the Income Tax Act including the keeping of records (s24).

114. The annual income return form for trusts requires the names and address of any beneficiaries to whom income was distributed in the relevant tax year. A beneficiary who is chargeable to tax on any income distributed from a trust (being a person either resident or in receipt of Saint-Lucian source income) will also be required to file an income return. However there is exemption to the provisions of the Income Tax Act for all trusts established

in Saint Lucia (whether International Trusts or otherwise) where the trust has a qualifying trustee, pursuant to the International Trusts Act as described in the Introduction.

115. Also, a tax exemption applies to International Trusts, both for the trust itself, as well as the trust income distributed to beneficiaries (provided the beneficiary is not a resident of Saint Lucia). However, any income of an International Trust which accrues or derives from Saint Lucia will be subject to tax (with the exception of ordinary bank interest or portfolio securities investments) although the scope of" income or gains deriving from Saint Lucia" is expanded for these purposes, as described in the Introduction.

Conclusion on trusts

116. For International Trusts, the International Trust Act and the AML regime establish clear obligations to keep identity information on the settlor, trustee and beneficiaries of the trust. For ordinary trusts, with a professional trustee, the obligations of the AML regime will also apply. Further, for trusts which are tax-resident in Saint Lucia and where there is income distributed to beneficiaries (whether resident in Saint Lucia or otherwise) and the trust does not have a professional trustee, the name and address of the beneficiary in receipt of income must be disclosed in the annual income return.

117. There may be a small class of trusts, being ordinary trusts without a professional trustee, for whom an obligation to know the identity of the settlor arises only from the requirements of the common law. An in-depth assessment of the effectiveness of the common law requirements with respect to availability of identity information pertaining to settlors will be considered as part of Saint Lucia's Phase 2 review.

118. Finally, it is conceivable that a trust could be created which has no connection with Saint Lucia other than that the settlor chooses the trust to be governed by Saint Lucia's law. In that event, there may be no information about the trust available in Saint Lucia although Saint Lucia maintains that such trusts are caught by the phrase "established in Saint Lucia" in the Income Tax Law. In line with Saint Lucia's interpretation, those trusts whose only connection with Saint Lucia was that they are governed by the laws of Saint Lucia would be subject to the record keeping requirements in the Income Tax Act as described above. However it is unclear how enforcement measures would be applied in such cases, as there may be no person with a territorial connection with Saint Lucia. Also, trust information would be available in the jurisdiction where the trustee is located as the relevant records would be situated there.

Foundations (ToR A.1.5)

119. The laws of Saint Lucia do not include the concept of a foundation and it is therefore not possible to create a foundation in Saint Lucia

Other types of relevant entities and arrangements

Co-operatives

120. Co-operatives can be created pursuant to the Cooperative Societies Act, and upon registration become a body corporate. A co-operative is defined as an entity comprising a group of people with a commitment to joint action on the basis of democracy and self-help to secure a service or economic arrangement that is both socially desirable and beneficial to all taking part (for example, a credit union, worker's society or agricultural society).

121. Co-operatives must be registered with the Registrar of Cooperatives, who is responsible for registration, supervision and maintenance of adequate and reliable records among others (Co-operative Societies Act, sec 5). Under section 23 of the Act, only citizens or residents of Saint Lucia may be members and co-operatives must keep a register of all members which includes their names and addresses and the date on which they became, and ceased to be, a member (Co-operative Societies Act, sec 25). A transfer of a membership share must be approved by the board and is effective only upon registration of the transfer with the cooperative (s95, Cooperative Societies Act).

122. A co-operative must have at all times a registered office and the address of such office must be specified in the by-laws (s17, Co-operative Societies Act). This office must make available the co-operative's records, including registers of members, copies of its by-laws, all minutes of meetings of members and directors and the register of directors. In accordance with Part 8 of the Cooperative Societies Act, cooperatives are also required to prepare audited annual financial statements, although there are no express requirements to keep all underlying documentation to the accounts, or to keep accounting records for a minimum period. Co-operatives are exempt from income tax (Co-operative Societies Act, sec. 235) and as such are not required to file a return of income with the Comptroller (s84(2), Income Tax Act). However, as they are carrying on business, they are still subject to the obligations described in section 90 of the Income Tax Act to keep accounting records.

Enforcement provisions to ensure availability of information (ToR A.1.6)

123. The existence of appropriate penalties for non-compliance with key obligations is an important tool for jurisdictions to effectively enforce the obligations to retain identity and ownership information. Non-compliance with obligations affects whether the information is available to Saint Lucia to respond to a request for information by its EOI partners in accordance with the international standard. The relevant enforcement provisions are set out below.

Companies

124. For domestic companies and external companies registered under the Companies Act, section 194(3) establishes an offence for failure to submit annual information returns, which includes identity information on the owners of such companies. Under the general penalty provision of section 541 of the Companies Act, a person found liable for the offence will be subject upon summary conviction to a fine of ECD 5 000. In addition, the Registrar of Companies has the power to strike-off defaulting companies from the registry (s519, Companies Act). In respect of the specific obligation to keep a register of substantial shareholdings, section 184(3) makes it an offence for non-compliance, and which will also be subject to the general penalty provision of section 541 of the Companies Act.

125. An IBC which wilfully contravenes the requirement to keep a shareholder register is liable to a penalty of USD 500 per day, with the director of an IBC who knowingly permits the contravention also so liable (s28(6), IBC Act).

Partnerships

126. For ordinary and limited partnerships, the fine for non-compliance with the obligation to register the partnership and provide to the Registrar identity information on each of the partners is ECD 24 and ECD 4.80 for every further day of default (art. 20, Commercial Code). A limited partnership is under an express obligation to keep that ownership information in the Register up to date and a failure to comply will render each general partner liable to a fine of ECD 4.80 for every day in default.

127. For IPs (both IGPs and ILPs), there is a general penalty provision applicable for any breach of the obligations of the IP Act. Under section 113, a person found responsible for a breach is liable to a fine of USD 5 000. In addition, where an ILP wilfully contravenes the obligation to maintain a Register of Contributions, which includes the name and address of each partner, each

general partner will be liable to a fine not exceeding USD 500. In addition, an ILP is required to name the general partners in the memorandum of partnership registered with the Registrar and keep that information up to date. Where a memorandum contains false information, any person suffering loss in reliance may hold liable the general partners as well as the ILP's registered agent.

Trusts

128. All trustees must be registered, and under the RATLA, there is a general penalty provision applicable for any person who commits an offence under the Act. That person will be liable to conviction on indictment to a fine of ECD 100 000 or to imprisonment for three years, or both. Also, in respect of the trustee's obligations under the Act, the Director of the FSRA may determine whether a breach of the obligations of the RTLA has occurred, including in relation to the obligation to keep books and records as required by section 18. A breach can be classed as either a compliance issue or as "grave". For compliance issues, the Director will advise the trustee of the breach and the steps needed to rectify it, by letter; for grave matters, the Director has a number of penalty measures available including suspension or revocation of the trustee's licence.

Tax law

129. Section 140 of the Income Tax Act is a general penalty provision for failure to comply with any requirements of the Income Tax Act, including the obligation to keep records of transactions and preserve books and documents required by section 90. A person failing to comply with those requirements is liable to a fine of ECD 1 000 or imprisonment for one year. Further, a person who fails to furnish information or produce documents when requested by the Comptroller will be liable to a penalty not exceeding ECD 500 (s136).

Anti-money laundering regime

130. A breach of the Money Laundering (Prevention) (Guidance Notes) Regulations (which includes the AML Guidelines) constitutes an offence, and persons in breach of those regulations may be liable to a fine not exceeding ECD 1 000 000. Also, section 16(h) of the MLPA requires the specified transaction records to be kept in a legible, retrievable form, and a person who fails to comply with that obligation commits an offence, with fines ranging from ECD 100 000 to ECD 500 000, or imprisonment of between 7-15 years.

131. In addition, AML Service Providers which are regulated financial service entities are subject to a licensing regime supervised by the FSRA, whose licensing obligations require compliance by the licensee with their obligations under the AML regime.

Conclusion on enforcement measures

132. Saint Lucia's legal framework establishes enforcement measures in respect of the relevant ownership and identity obligations. Their effectiveness in practice is a matter which will be considered as part of the Phase 2 review of Saint Lucia.

Conclusion for Part A.1

133. There are obligations to require that ownership and identity information is available for all domestic companies, IBCs and foreign companies carrying on business in Saint Lucia. All partnerships liable to tax, carrying on business or formed under the laws of Saint Lucia (including limited partnerships) are also subject to identity information requirements in respect of their partners. For trusts formed as International Trusts in Saint Lucia, there are clear obligations for the trustee to be registered and to know the identity of the settlor and beneficiaries. For ordinary trusts, the trustee will be required to advise on the identity of beneficiaries at the time of any distribution to them under the Income Tax Act; however, there are no clear requirements to know the identity of the settlor for such ordinary trusts unless they engage a professional trustee. Finally, enforcement measures under Saint Lucia's laws exist to support compliance with Saint Lucia's legal framework to keep identity and ownership information.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
The obligation for a company formed under the laws of another CARICOM or OECS member state, but carrying on business in Saint Lucia, to ensure the availability of ownership information is not clear.	Saint Lucia should ensure that for companies formed under the laws of a CARICOM or OECS member state and carrying on business in Saint Lucia, there are clear obligations for ownership information to be maintained.

A.2. Accounting records

Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements.

General requirements (ToR A.2.1), Underlying documentation (ToR A.2.2) and 5-year retention standard (ToR A.2.3)

Companies

134. All companies formed under the Companies Act, must prepare annual financial statements (s149, Companies Act), being a balance sheet, statement of income and retained earnings, and a statement of changes in financial position. The company is also subject to a separate obligation under section 187, to keep "adequate" accounting records which include records sufficient to enable the directors to ascertain the financial position of the company with reasonable accuracy on a quarterly basis. These obligations under the Companies Act would be sufficient to enable the financial position of the company to be determined with reasonable accuracy and require the preparation of financial statements, but may not allow a sufficient explanation of all transactions, or the maintenance of underlying documentation, in line with the international standards.

135. The IBC Act provides for IBCs to keep at their registered office such accounts and records as the directors consider necessary or desirable in order to reflect the financial position of the IBC (s66, IBC Act). However, the IBC Act also provides at section 111 that:

> "Despite any enactment to the contrary, an international business company may keep such books, records, and financial statements as it thinks fit.

136. Therefore, IBCs are not required to keep the records that are otherwise required to be kept by all persons carrying on business, whether pursuant to the Income Tax Act or otherwise imposed by Saint Lucia's laws.

137. Companies formed in a CARICOM or OECS member state and carrying on business in Saint Lucia are not subject to any express requirements to keep accounting information under the Companies Act. They will be subject to the obligations of the Income Tax Act where they are carrying on business in Saint Lucia, or where they are tax-resident (for example where they are managed and controlled in Saint Lucia).

138. For all other foreign companies carrying on business in Saint Lucia, there are no express accounting record requirements imposed by the Companies Act.

139. When any company formed under the laws of another jurisdiction is tax resident in Saint Lucia (including where it is managed and controlled in Saint Lucia) or is carrying on business in Saint Lucia, it will generally be subject to the account record-keeping obligations found in the Income Tax Act.

Partnerships

140. The Commercial Code establishes requirements for accounting records which are applicable to ordinary and limited partnerships. Partners are bound to render "true accounts and full information" of all things affecting the partnership to any other partner and all partners must account to the partnership for any benefit derived from any transaction concerning the partnership, or any use by the partner of the partnership's property, name or business connections (ss47-48, Commercial Code). Partners of International Partnerships are subject to the same requirements as under the Commercial Code for ordinary partnerships, pursuant to sections 49-50 of the International Partnerships Act. Neither the Commercial Code nor the International Partnerships Act establishes a minimum retention period for these accounting records.

Trusts

141. For ordinary trusts, there are no obligations under the Civil Code or the Trusts Act 2006 establishing accounting record requirements in respect of the trust. Trusts formed under Saint Lucia's laws will be subject to common law fiduciary obligations on trustees to keep accurate accounts and records although the scope of these obligations could not be determined in the Phase 1 review of Saint Lucia. If the trustees fail to meet their common law obligations they are liable for legal action for breach of their fiduciary duties. An in-depth assessment of the effectiveness of this common law regime will be considered as part of the Phase 2 Peer Review of Saint Lucia. Some ordinary trusts will also be subject to the income tax law obligations and Saint Lucia's anti-money laundering regime.

142. For International Trusts, the registered trustee must keep documents necessary to show the "true financial position of the trust" (s52(1)(c), International Trust Act). The scope of this requirement is not clear and does not clearly establish an obligation for the trustee to keep all reliable accounting records, including underlying documentation for a 5 year minimum period. Therefore, by itself, this obligation would not meet the international standard.

143. All trustees of International Trusts carrying on that trustee business in or from Saint Lucia must be registered under the RATLA, and are required to keep books or records of account as accurately reflect the business of the

trust (s18, RATLA). A failure to keep such documents will render the registered trustee liable on conviction to a fine of ECD 100 000 and the Court may order that they be supervised or cease to serve as a trustee for up to 4 years. All registered trustees will also be subject to the record-keeping obligations of the income tax law (as the representative taxpayer of the trust, but only in so far as the trust itself is "carrying on business") and also the record keeping obligations of the AML regime.

Income tax law

144. "Every person carrying on any business" shall keep the accounting records described in section 90 of the Income Tax Act. The term "carrying on business" is not defined for the purposes of the Income Tax Act. However, "business" is defined as "any profession, trade, venture, or undertaking and includes the provision of personal services or technical and managerial skills and any adventure or concern in the nature of trade but does not include any employment". Therefore, the obligations will cover many persons chargeable to tax under the Income Tax Act, but, for example, would not include individual employees.

145. The accounting records required to be kept pursuant to section 90 of the Income Tax Act are:

> such records or books of accounts as are necessary to reflect the true and full nature of the transactions of the business regard being had to the nature of the activities concerned and the scale on which they are carried on.

146. Further, every person carrying on any business shall "preserve all books of account *and other records which are essential to the explanation of any entry* in such books of account of that business for a period of 6 years" (s90(4), Income Tax Act). Any person that fails to keep the records as required under section 90 is guilty of an offence and liable to a fine of ECD 1 000 and to imprisonment for one year (s140, Income Tax Act). These requirements are in line with the international standard in respect of the maintenance of reliable accounting records.

147. These obligations under the Income Tax Act do not apply to IBCs however (s111 of the IBC Act) nor do they apply to International Partnerships (s101 International Partnerships Act) or trusts which are either International Trusts or trusts established in Saint Lucia where that trust has a qualifying trustee (s51(5), International Trust Act). While cooperatives are exempt from income tax and from the obligation to file an annual return, they are "carrying on a business" and Saint Lucia has confirmed that they remain subject to the record-keeping obligations described in s90 of the Income Tax Act.

Financial Services Regulatory regime

148. Regulated entities (entities under the supervision of the FSRA) must prepare financial statements, in accordance with each specific regulatory act. In particular, for International Banks, International Insurance entities and International Mutual Funds, these are the standards established by the International Accounting Standards Board.[6] Domestic insurance entities must keep "such books, vouchers, records, receipts and other documents as may be necessary to enable it to prepare for transmission to the Registrar a statement of the insurance business carried on by it in Saint Lucia" (s24, Insurance Act). Under section 26 of the Insurance Act, domestic insurance companies must also prepare annual financial statements.

149. For entities subject to the Registered Agent and Trustees Act, the requirement is to keep "proper records" and have in place "adequate" accounting procedures and internal controls. For cooperatives, section 124 of the Cooperative Societies Act requires financial statements to be tabled annually; however cooperatives may be relieved of this obligation provided the reason for the omission is set out in the financial statement to be placed before the members or in a note attached thereto, as determined by the Registrar.

150. For international banks, insurance entities and mutual funds there is no clear requirement to keep underlying documents, or to keep any documents for a minimum five year period if they are not otherwise subject to the relevant Income Tax Act or AML regime obligations. For registered agents and trustees, there is no clear obligation to keep all relevant accounting records, including underlying documents, for a five year minimum period unless otherwise subject to the relevant Income Tax Act or AML regime obligations.

Anti-money laundering regime

151. AML Service Providers must keep accounting records in respect of the persons for whom they act in respect of certain transactions. Relevant transactions will be those involving the formation of a business relationship (or where such a relationship has already been established); a one-off transaction (or series of transactions) involving USDECD 10 000 or more; or where there is knowledge or suspicion of money laundering (s15(c), MLPA).

152. Under section 16(a)(i) of the MLPA, AML Service Providers shall:

6. These obligations arise from s15, International Banks Act; s15 International Insurance Act; and s37, International Mutual Funds Act.

> establish and maintain transaction records for both domestic and international transactions for a period of seven years after the completion of the transaction recorded

153. Relevant transactions are those involving the formation of a business relationship (or where such a relationship has already been established); a one-off transaction (or series of transactions) involving ECD 10 000 or more; or where there is knowledge or suspicion of money laundering (s15(c), MLPA).

154. A transaction is defined in section 2 of the MLPA to include the making of a gift, the purchase of anything including services, wire transfers, account deposits and internet transactions.

155. Section 16(h) requires these transaction records to be kept in a legible, retrievable form, and a person who fails to comply with that obligation commits an offence, with fines ranging from ECD 100 000 to ECD 500 000, or imprisonment of between 7-15 years.

156. Best practice in respect of these record-keeping obligations is described in the AML Guidelines. Under paragraph 170 of the AML Guidelines, AML Service Providers should maintain "all relevant records on the identity and transactions of their customers, both locally and internationally, for seven years or longer if required by the Authority". This should include all entry, ledger, and supporting (such as credit and debit slips, and cheques) records as described in paragraph 172 of the MLPGNR. They should be maintained in such a manner that permits the reconstruction of individual transactions (paragraph 180).

157. The AML regime creates obligations which ensure accounting records are maintained in line with the international standard. However, while an entity or arrangement is required to engage an AML Service Provider, there is no obligation that it conducts all transaction through that person. Given the reliance that IBCs in particular place on the AML regime to ensure that relevant accounting records are maintained (in the absence of satisfactory obligations imposed directly on those entities and arrangements), these limitations are such that full accounting records may not be available in certain cases in respect of these entities and arrangements.

Conclusion for Part A.2

158. Companies which are carrying on business are subject to the Income Tax Act record keeping obligations, and are obliged to keep all relevant accounting records, including underlying documentation for a minimum period of six years. All ordinary and limited partnerships, as well as cooperatives are also subject to these Income Tax Act record keeping obligations.

159. IBCs and International Partnerships are exempt from the Income Tax Act obligations. IBCs are only required to keep such records as their directors think fit, and partners in an International Partnerships must render "true accounts and full information" of all things affecting the partnership. Both IBCs and International Partnerships are required to keep a registered agent, who will be subject to the AML record keeping obligations, and are required to keep relevant accounting records for the IBCs in respect of those transactions which the IBC conducts through them. However this will not ensure that all relevant accounting information for the IBC or International Partnership is available.

160. For both International Trusts and trusts established in Saint Lucia that have a qualifying trustee, there is an exemption from the record-keeping provisions of the Income Tax Act. All International Trusts are required to have a registered trustee who will be subject to the AML regime, and for other trusts established in Saint Lucia, their trustee will also be subject to the AML regime where the trustee is resident in Saint Lucia. However, these AML regime obligations will not ensure that reliable accounting information is kept in all instances in line with the international standard.

Determination and factors underlying recommendations

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
International Business Companies are exempt from the record-keeping obligations of the Income Tax Act, and otherwise are only required to keep such accounting records as their directors think fit. Pursuant to the AML regime, some relevant accounting records for transactions conducted by the IBC through their registered agent or other AML Service Provider will be required to be kept. However this will not ensure all relevant accounting records are maintained.	Saint Lucia should introduce requirements to ensure that IBCs are in all instances subject to requirements to keep relevant accounting records, including underlying documentation, for a minimum five year period.

Phase 1 determination	
The element is not in place.	
Factors underlying recommendations	**Recommendations**
International Partnerships are exempt from the record keeping requirements of the Income Tax Act. They will only be subject to the accounting record obligations established by the Commercial Code which requires partners to render "true accounts and full information" of all things affecting the partnership. There is no express requirement to keep such records for any minimum period of time. Pursuant to the AML regime, some relevant accounting records will be required to be kept in respect of the transactions conducted by the International Partnership through its registered agent or other AML Service Provider. However this will not ensure all relevant accounting records are maintained.	Saint Lucia should ensure that International Partnerships are subject to a requirement to keep reliable accounting information, including underlying documentation for a minimum period of five years.
Trusts will be subject to the common law obligations to keep records relating to the trust, although the scope of those accounting record obligations were not ascertainable. Further, certain ordinary trusts will also be subject to the Income Tax record-keeping obligations. Trusts which engage an AML Service Provider will be required to keep some relevant accounting records, however these obligations will not ensure that all relevant accounting information is kept in respect of trusts created under the laws of Saint Lucia, or which are administered from or have a trustee resident in Saint Lucia.	Saint Lucia should ensure that trusts which are established under its laws, administered from, or with a trustee resident in Saint Lucia, are subject to requirements in all instances to keep reliable accounting information, including underlying documentation for a minimum period of 5 years.

A.3. Banking information

Banking information should be available for all account-holders.

Record-keeping requirements (ToR A.3.1)

161. Saint Lucia's anti-money laundering regime creates obligations to keep client identity information as well as all financial and transactional information relating to account holders. These obligations are imposed on "financial institutions" or persons engaged in "other business activities", which are defined under Schedule 2 of the MLPA. Relevantly, a "financial institution" will include:

- a bank licensed under the Banking Act;
- a building society or credit society registered under the relevant Acts;
- a company performing international financial services under the international financial services legislation in force in Saint Lucia;
- a trust company, finance company or deposit taking company, declared by the Minister to be a financial institution; and
- exchange bureaus and cash remitting services.

162. Persons engaged in "other business activities" includes persons engaged in money transmission services or issuing and administering means of payment (*e.g.* credit cards, travellers' cheques and bankers' drafts), deposit taking, investment or merchant banking. While there is no specific reference in Schedule 2 of the MLPA to companies licensed under the International Banks Act,[7] it appears that such companies would in all instances be considered as a company performing international financial services, and therefore also be covered by the requirements of the AML regime.

163. Provisions concerning the obligation to keep banking information on account holders arise from the MLPA, with best practice described in the MLPGNR.

164. Section 15 of the MLPA requires AML Service Providers to take "reasonable measures" to determine the true identity of the person seeking to or carrying out a transaction. Relevant transactions will be those involving the formation of a business relationship, or a one-off transaction (or series of transactions) involving ECD 10 000 or more, or where there is knowledge or suspicion of money laundering (s15(c), MLPA). Where satisfactory evidence is not produced, the AML Service Provider must not proceed further with the transaction.

7. The International Banks Act is the legislation governing the licensing and regulatory regime for companies wishing to carry out international banking business from Saint Lucia (s4(1), International Banks Act).

165. Where the account holder appears to be acting on behalf of another person, as a trustee, nominee, agent or otherwise, reasonable measures shall be taken to verify the identity of that other person (s15(f-g), MLPA). However, in the case of accountholder whose identity has already been established, there is no ongoing obligation to verify their identity in the course of further transactions (s15(j), MLPA) except where there is doubt about the previously obtained information, the transaction is above ECD 25 000 or in other circumstances, taking into account the client's risk profile (s17, MLPA).

166. In respect of other information pertaining to the accounts, including financial and transactional information, section 16 of the MLPA requires the financial institution to:

> establish and maintain transaction records for both domestic and international transactions for a period of seven years after the completion of the transaction recorded.

167. The AML Guidelines describes the transaction records to be kept, including information on all transactions carried out on behalf of or with a customer in the course of relevant business. This extends to transaction records in support of entries in the accounts, in whatever form they are used, *e.g.* memoranda of sale and purchase, custody of title documentation *etc.*, should be maintained in a readily retrievable form from which a satisfactory audit trail may be compiled where necessary, and which may establish a financial profile of any suspect account or customer. These should include underlying documents, which would be necessary to compile any audit trail. Once a business relationship is established, the AML Guidelines recommends the AML Service Provider keep all relevant identity and transaction records for a minimum seven-year period (paragraph 170).

168. In sum, there are sufficient legal obligations in place requiring financial institutions to establish and maintain all relevant records pertaining to accounts, as well as to related financial and transactional information.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

B. Access to Information

Overview

169. A variety of information may be needed in a tax enquiry and jurisdictions should have the authority to obtain all such information. This includes information held by banks and other financial institutions as well as information concerning the ownership of companies or the identity of interest holders in other persons or entities, such as partnerships and trusts, as well as accounting information in respect of all such entities. This section of the report examines whether Saint Lucia's legal and regulatory framework gives the authorities access powers that cover all relevant persons and information and whether rights and safeguards are compatible with effective exchange of information.

170. Saint Lucia's powers to access information for domestic tax purposes are also used to access information for exchange under to its tax information exchange agreements. They include general access powers to require people to furnish information or to search premises, and specific powers for the access of bank information. The interpretation of the general access power is uncertain, and could be limited by a domestic tax interest where the access must be for the purposes of the Income Tax Law, and the information must relate to a person who is or may be liable to tax under that law.

171. Also, trustees and other persons connected with International Trusts as well anti-money laundering service providers are subject to a confidentiality obligation, and it is not clear how these duties are lifted where the information is sought for EOI purposes. Finally, the scope of attorney-client privilege is very broad, and is not consistent with the international standard. Therefore, for element B.1 concerning access powers, three recommendations are made to address these matters and the element is found to be in place, but needing improvement.

172. Element B.2 concerns the rights and safeguards that apply to persons in Saint Lucia. A right of appeal and, in some limited cases, a prior notification right exist in respect of the compulsory access powers. However, these provisions are not incompatible with the effective access to and exchange of information. This element is found to be in place, and no recommendations are made.

B.1. Competent Authority's ability to obtain and provide information

Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information).

Bank, ownership, and identity information (ToR B.1.1) and accounting records (ToR B.1.2)

173. Saint Lucia's competent authority is the Minister of Finance, or their authorised representative. The Comptroller of Inland Revenue (the Comptroller) is an authorised representative of the Minister for the purposes of Saint Lucia's EOI agreements. Pursuant to section 3, the Comptroller is responsible for the administration of the Income Tax Act, which includes, under section 60(1)(e), the power given to the Minister to enter into EOI agreements.

174. The CA's powers to access information are found in Part 9 of the Income Tax Act, in particular sections 87-88, and these powers can be used for EOI purposes although in some cases the exercise of the access powers appear to require the existence of a domestic tax interest in the information. There are general access powers, as well as specific powers for the purpose of accessing bank information. The general access powers are broad, under which the Comptroller may require a person to:

- furnish information: s87(1)(a);
- produce records or other documents: s87(1)(b);
- to attend before the Comptroller to give evidence s87(1)(c); or
- to give access to any premises to the Comptroller in order to examine business records: s88.

175. For bank information, there is a specific provision in section 87(2), which requires banks to grant the Comptroller access to any information held by them.

Use of information gathering measures absent domestic tax interest (ToR B.1.3)

176. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes.

177. Section 87(1)(a)-(c) provides the Comptroller with powers to require persons to *inter alia* furnish information, produce records, and attend before him to give evidence. The person who is so required must be a person who is

or may be liable to tax, or another person who is capable of providing information on the income of any such person:

> Section 87 (1) For the **purposes of the administration or the enforcement of this Act**, **including the obtaining of full information in respect of the income of any person who is or may be liable to tax** the Comptroller may, by notice in writing, require **that person** or any other person whom the Comptroller reasonably believes is **capable of so doing**—
>
> (a) to furnish to the Comptroller at such time as may be specified in such notice such further return of income, statement of assets and liabilities or other information as may be required by him or her;
>
> … [**emphasis added**]

178. That is, first, the powers must be exercised for the purposes of the administration or enforcement of this Act. Section 60(1)(e) of the Income Tax Act provides that:

> (1) Despite any other provisions of this Act the Minister may enter into an agreement with the Government of any other country with a view to—
>
> (e) the rendering of reciprocal assistance to facilitate the administration of this Act and the income tax laws of that other country and any agreement for the avoidance of double taxation or the exchange of information.

179. Second, the reference to "that person or any person whom the Comptroller reasonably believes is capable of so doing" appears to refer to the "obtaining of full information… any person who is or may be liable to tax", where "liable to tax" means liable pursuant to the Income Tax Act (Parts 3 and 10, Income Tax Act).

180. Further, section 88 provides the Comptroller with the power to access the premises of any person "liable to tax", in order to examine business records, and in light of the meaning of "liable to tax", this provision clearly creates a domestic tax interest for the exercise of the power under section 88. The Comptroller would still be able to access business records however, pursuant to the general power in s87(1) to require a person to furnish information, produce documents or attend to give evidence.

181. The proper interpretation of sections 87(1) is uncertain, and may create a "domestic tax interest" requirement for the exercise of this general access powers. Saint Lucia should clarify the interpretation to ensure that its authorities have the powers necessary to obtain relevant information for EOI

purposes. It is noted in that regard, that Saint Lucia's government is presently considering the International Tax Cooperation Bill which is intended to clarify the access powers, and other processes relevant to its EOI arrangements. The effect of the proposed legislation should be considered once it is in force, in the Phase 2 review of Saint Lucia

182. In contrast, the specific provision for access to bank information is clearly not subject to any domestic tax interest requirement (s87(2), Income Tax Act).

Compulsory powers (ToR B.1.4)

183. The Comptroller's general access powers are broad as described in more detail above. Pursuant to sections 87(1), the Comptroller may require a person to furnish information, produce documents or attend to give evidence. Under section 88, the Comptroller may enter premises (with notice, s89) in order to examine the business records of a person liable to tax.

184. For access to bank information, under section 87(2) the Comptroller may require any bank:

> (a) to furnish to him or her details of any banking account or other assets which may be held on behalf of any person, or to furnish a copy of bank statements of any such banking account;
>
> (b) to permit the Comptroller or any officer not being below the rank of a senior tax inspector authorised by him or her to inspect the records of the bank with respect to the banking account of any person; or
>
> (c) may require the attendance of any officer of a bank before him or her to give evidence respecting any bank account or other assets which may be held by the bank on behalf of any person.

Secrecy provisions (ToR B.1.5)

185. Under Saint Lucia's domestic legal framework, a number of secrecy provisions exist, namely under the Constitution and the Income Tax Act, as well as specific provisions for information regarding international mutual funds, international insurance entities as well as domestic banks and financial institutions, and International Trusts.

186. The Constitution of Saint Lucia provides that a person shall not without their consent be subject to a search of their person, property or entry of others onto their property. An exception applies, however, where such access is done under the authority of a law (section 7, Constitution).

187. The Income Tax Act expressly permits the Comptroller, or any person employed in carrying out or having any official duties under the Income Tax Act, to disclose information obtained in the course of their duties which would otherwise be secret (s6(1), Income Tax Act) to:

> any authorised officer of the Government of a country with which an international agreement for the avoidance of double taxation or exchange of information exists, for the purposes of that agreement (s6(2)(c), Income Tax Act)

International Mutual Funds and International Insurance

188. Both the International Insurance Act (s20) and the International Mutual Funds Act (s53) require that the Minister or other person shall not disclose any information about entities registered or having applied to register under those Acts, which they persons have obtained in the course of their duties under those Acts. An exception permits disclose where it is permitted "under any other law in force in Saint Lucia" (s20(2), International Insurance Act; s53(2)(d), International Mutual Funds Act), which will therefore permit access to such information for EOI purposes.

Bank secrecy

189. For banks and financial institutions subject to the Banking Act, section 32 of the Banking Act –imposes an obligation on persons, including directors, managers, secretaries, officers, employees or any agents of a financial institution, not to disclose the "identity, assets, liabilities, transactions or other information in respect of a depositor or customer of a financial institution". However, section 32(d) provides a relevant exception:

> Except-
>
> (d) under the provisions of any law of Saint Lucia or agreement among the participating Governments;

190. For banks licensed under the International Banks Act, there does not appear to be any express obligation to maintain the confidentiality of customer or transaction information. Further, the secrecy provision of section 32 of the Banking Act does not appear to apply to such banks. Section 55 of the International Bank Act provides:

> "Except as expressly provided therein, the Banking Act shall not apply to any company carrying on international banking business, and this Act shall have no application to companies licensed to carry on a banking business under the Banking Act."

191. Therefore, the obligations to maintain the secrecy of bank information under the Banking Act and the International Bank Act are subject to exemptions where the information is to be accessed for EOI purposes.

Trust secrecy

192. Trustees, protectors "or other person" are subject to an obligation pursuant to section 53 of the International Trust Act not to disclose to "any person not legally entitled thereto" any information regarding an International Trust. Trustees are liable, jointly and severally, for any breach of an International Trust, for any loss or depreciation to the trust property which results, or any profit which would have accrued but for the breach.

193. There is no clear provision indicating that the Comptroller would be a person "legally entitled" to information regarding an International Trust, and Saint Lucia should clarify that the Comptroller's access powers would entitle them to access such information. Saint Lucia has advised that under the proposed International Tax Cooperation Bill, the Comptroller's ability to access such information for EOI purposes will be clarified, and the effect of the proposed legislation should be considered once it is in force, in the Phase 2 review of Saint Lucia.

Professional secrecy

194. All of Saint Lucia's exchange of information agreements permit Saint Lucia to decline a request if responding to it would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy. This follows the international standard.

195. Among the situations in which Saint Lucia is not obliged to supply information in response to a request is when the requested information would disclose communications protected by attorney-client privilege.

196. The scope of attorney-client privilege under the international standard is described in the OECD Model TIEA and OECD Model Double Tax Convention, and their commentaries, and refers to confidential communications (i) produced for the purposes of seeking or providing legal advice or (ii) produced for the purposes of use in existing or contemplated legal proceedings.

197. In Saint Lucia, attorney-client privilege is defined by paragraph 22(2) of Schedule 3 in the Legal Profession Act, which provides that

> An attorney-at-law shall scrupulously guard and never divulge his or her client's secrets and confidences

198. Therefore, it will protect the disclosure of information including communications produced for purposes other than seeking or providing legal advice or use in existing or contemplated legal proceedings. In particular, the privilege would appear to include legal advice in respect of tax matters, as well as working papers or documents executed in the course of a transaction or where the lawyer is acting in the capacity of a fiduciary, nominee or agent. In sum, the scope of information covered by the privilege is considerably broader than the international standard.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place, but certain aspects of the legal implementation of the element need improvement	
Factors underlying recommendations	**Recommendations**
It is unclear from the wording of the Comptroller's general access power under section 87(1) whether the power permits access even though there may be no domestic tax interest in the information.	Saint Lucia should clarify the Comptroller's powers to access all relevant information, regardless of the existence of a domestic tax interest in that information.
It is not unequivocally established that the Comptroller would be a person "legally entitled" to access confidential information pertaining to International Trusts.	Saint Lucia should clarify that the Comptroller will be a person "legally entitled" to access information regarding International Trusts, notwithstanding the general obligation of confidentiality which applies to such information.
Attorney-client privilege protects all the secrets and confidences of an attorney's client. This would cover information more broadly than the international standard which is restricted to communications produced for the purposes of seeking or providing legal advice, or use in existing or contemplated legal proceedings.	Saint Lucia should ensure that the scope of attorney-client privilege in domestic law permits access to relevant information otherwise protected by the privilege, to the extent required under the international standard.

B.2. Notification requirements and rights and safeguards

The rights and safeguards (*e.g.* notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information.

Not unduly prevent or delay exchange of information (ToR B.2.1)

199. The *Terms of Reference* provides that rights and safeguards should not unduly prevent or delay effective exchange of information. For instance, notification rules should permit exceptions from prior notification (*e.g.* in cases in which the information request is of a very urgent nature or the notification is likely to undermine the chance of success of the investigation conducted by the requesting jurisdiction).

200. Under Saint Lucia's law, there are no provisions requiring notification of persons who are the object of an EOI requirement. Where the power to access premises to examine business records is to be exercised under section 88 of the Income Tax Act, the owner of the premises is to be given "prior notice". However, there is no prior notice requirement in respect of the compulsory powers to furnish information, provide documents, or give evidence under section 87, and there are no provisions which specifically require the notification of persons who are the object of an EOI requirement.

201. There are rights to object to the decision of a Comptroller where that person is "aggrieved by an assessment or determination" (s106, Income Tax Act), which is defined to include:

> (e) the determination by the Comptroller of any matter affecting a person's liability to tax in circumstances where such determination has not involved the making of an assessment.

202. Noting that liability to tax refers to liability under Saint Lucia's Income Tax Act (see Part B1 above), this right to object appears to apply only in respect of EOI requests where a relevant determination by the Comptroller (for example, to issue a notice requiring information to be furnished) affects a person's liability to tax in Saint Lucia. There is no statutory timeframe in which to determine the objection.

203. Following the right to object, is a right to appeal from the objection decision under section 109, Income Tax Act. The appeal is made to appeal commissioners who are appointed under section 110. Again, there is no statutory timeframe in which to determine the appeal. Appeals are not held in public, unless the Chairperson of the appeal commissioners so determines and lifts the obligation of secrecy relating to tax information under section 6 of the Income Tax Act.

204. Whilst there is no statutory timeframe to determine either an objection or appeal made from a decision of a Comptroller, the objection or appeal only suspends the obligation to any tax or penalty which would otherwise be payable (s112, Income Tax Act). The Income Tax Act does not provide for it having any suspensive effect which would prevent the Comptroller from accessing information using his compulsory powers, or from exchanging such information pursuant to an EOI request. Further, in the context of an EOI request, the ability to object and appeal from a decision of the Comptroller will be of limited relevance, as such a decision must affect the liability to tax of a person under Saint Lucia's tax law.

205. The actions of the competent authority and Comptroller in exercising their powers in respect of carrying out the obligations of Saint Lucia's EOI agreements would also be subject to usual processes of judicial review, for example in relation to determining whether they had acted ultra vires.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place.

C. Exchanging Information

Overview

206. Jurisdictions generally cannot exchange information for tax purposes unless they have a legal basis or mechanism for doing so. In Saint Lucia, the legal authority to exchange information is derived from its double taxation conventions (DTCs), TIEAs as well as from its domestic law. This section of the report examines whether Saint Lucia has a network of information exchange that would allow it to achieve effective exchange of information in practice.

207. Saint Lucia has a broad network of EOI agreements covering 31 EOI partners, and 28 of those agreements are in force. These agreements are a mixture of tax information exchange agreements, a multilateral double tax convention between members of the Caribbean Community, as well as a bilateral double tax convention with Switzerland. These agreements are generally in line with the international standard with the exception of the agreement with Switzerland. However, the exchange of information under all of its EOI agreement may be limited by the apparent domestic tax interest and the broadly defined attorney-client privilege, as described in Part B.1 of the report. Therefore, Saint Lucia is yet to take all steps necessary to give full effect to its obligations under its agreements, and element C.1 is found to be in place but needing improvement. Its network of EOI agreements meets the international standard and the confidentiality of information exchanged under those agreements is adequately protected. As a result, elements C.2 and C.3 are found to be in place.

208. The EOI arrangements and domestic law generally respect the rights and safeguards of taxpayers and relevant third parties. However, the scope of attorney-client privilege is broad and may prevent the exchange of information in a manner not consistent with Saint Lucia's EOI agreements. A recommendation is made to address this issue, and element C.4 is found to be in place, but with certain aspects needing improvement.

209. Finally, there appears to be no legal restrictions on the ability of Saint Lucia's competent authority to respond to EOI requests within 90 days of receipt by providing the information requested or an update on the status of the request. The present report does not conclude its consideration of this issue, as it involves issues of practice which will be examined in Saint Lucia's Phase 2 review (see element C.5 below).

C.1. Exchange-of-information mechanisms

Exchange of information mechanisms should allow for effective exchange of information.

210. Saint Lucia's Minister of Finance is empowered to enter into EOI agreements pursuant to section 60 of the Income Tax Act:

> Section 60(1) Despite any other provisions of this Act, the Minister may enter into an agreement with the Government of any other country with a view to—
>
> (e) the rendering of reciprocal assistance to facilitate the administration of this Act and the income tax laws of that other country and any agreement for the avoidance of double taxation or the exchange of information.

211. To date, Saint Lucia's EOI arrangements include 20 signed tax information exchange agreements (TIEAs), a double tax convention (DTC) signed with Switzerland, as well as being a signatory since 1994 to the multilateral CARICOM tax treaty[8] with 10 other members of the Caribbean Community. In total, its network of signed agreements covers 31 EOI partners, and 28 of these EOI agreements are in force.

212. In addition, Saint Lucia has one DTC which contains a very limited provision on exchange of information. This is the DTC signed between the UK and Switzerland, which was later extended by an exchange of notes to apply to Saint Lucia (1963). As between the United Kingdom and Saint Lucia, the DTC was terminated in 1988 (and a TIEA now exists between those parties).

8. The "CARICOM tax treaty" is agreement is a double tax convention between member states of the Caribbean Community (CARICOM); its full title is: Agreement among the Governments of the member states of the Caribbean Community for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income, Profits or Gains and Capital Gains and for the Encouragement of Regional Trade and Investment.

Foreseeably relevant standard (ToR C.1.1)

213. The international standard for exchange of information envisages information exchange upon request to the widest possible extent. Nevertheless it does not allow "fishing expeditions", *i.e.* speculative requests for information that have no apparent nexus to an open inquiry or investigation. The balance between these two competing considerations is captured in the standard of "foreseeable relevance" which is included in Article 1 of the OECD Model TIEA, with a similar provision in Article 26(1) of the Model Tax Convention, as set out below:

> *The competent authorities of the Contracting Parties shall provide assistance through exchange of information that is foreseeably relevant to the administration and enforcement of the domestic laws of the Contracting Parties concerning taxes covered by this Agreement. Such information shall include information that is foreseeably relevant to the determination, assessment and collection of such taxes, the recovery and enforcement of tax claims, or the investigation or prosecution of tax matters.*

214. Each of the TIEAs signed by St Lucia, as well as the CARICOM tax treaty meets the "foreseeably relevant" standard set out above and described further in the Commentary to Article 1 of the OECD Model TIEA.

215. Saint Lucia's DTC with Switzerland provides only for the exchange of information for the purposes of "carrying out the provisions of the present Convention in relation to the taxes which are the subject of the Convention". Saint Lucia should take steps to bring its DTC with Switzerland in line with the standard, in order to also permit the exchange of information which is foreseeably relevant to the administration and enforcement of the relevant domestic tax laws of the two parties.

In respect of all persons (ToR C.1.2)

216. For exchange of information to be effective it is necessary that a jurisdiction's obligation to provide information is not restricted by the residence or nationality of the person to whom the information relates or by the residence or nationality of the person in possession or control of the information requested. For this reason, the international standard for exchange of information envisages that exchange of information mechanisms will provide for exchange of information in respect of all persons.

217. None of Saint Lucia's TIEAs restrict the exchange of information to persons either resident or national of one of such as those considered resident in or nationals of one of the contracting jurisdictions, or precludes the application of EOI provisions in respect to certain types of entities. Further,

each of the TIEAs contains a provision on jurisdictional scope equivalent to article 2 of the OECD Model TIEA:

> A Requested Party is not obligated to provide information which is neither held by its authorities nor in the possession or control of persons who are within its territorial jurisdiction

218. The CARICOM tax treaty does not contain the sentence indicating that EOI is not restricted by Article 1. However, its EOI provision applies to "carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention insofar as the taxation there under is not contrary to the Convention". This agreement would not be limited to residents because all taxpayers, resident or not, are liable to the domestic taxes listed in Article 2 (*e.g.* domestic laws also apply taxes to the income of non-residents). Exchange of information in respect of all persons is thus possible under the terms of this agreement.

Obligation to exchange all types of information (ToR C.1.3)

219. Jurisdictions cannot engage in effective exchange of information if they cannot exchange information held by financial institutions, nominees or persons acting in an agency or a fiduciary capacity. The *OECD Model Taxation Convention* and *OECD Model TIEA*, specify that bank secrecy cannot form the basis for declining a request to provide information and that a request for information cannot be declined solely because the information is held by nominees or persons acting in an agency or fiduciary capacity or because the information relates to an ownership interest.

220. Each of the TIEAs signed by Saint Lucia specify that the parties should ensure that they have the power to obtain and provide upon request information held by banks, other financial institutions, and any person acting in an agency or fiduciary capacity, including nominees or trustees, consistently with Article 5(4) of the OECD Model TIEA.

221. Article 20 of Saint Lucia's DTC with Switzerland only requires the exchange of information "which is at their [the parties] disposal under their respective taxation laws in the normal course of administration". Further, it does not include a provision equivalent to article 26(5) of the OECD Model Tax Convention, to prevent the parties from declining to supply information solely because it is held by a bank, financial institution, nominee or other person acting in an agency or fiduciary capacity. As a result, the exchange of all types of information with Switzerland is not possible because of restrictions in Switzerland's domestic laws. Saint Lucia is able to access all types of information under its domestic tax law.

222. The CARICOM tax treaty does not contain provisions similar to paragraph 26(5) of OECD Model Taxation Convention.[9] However, the absence of this paragraph does not automatically create restrictions on the exchange of bank information. The commentary in the convention to Article 26(5) indicates that while paragraph 5, added to the Model Tax Convention in 2005, represents a change in the structure of the Article, it should not be interpreted as suggesting that the previous version of the Article did not authorise the exchange of such information.

223. In respect of Saint Lucia and the CARICOM tax treaty, the obligation to exchange all types of information is only clearly available with respect to two of its signatories, Saint Kitts and Nevis and Saint Vincent and the Grenadines for the following reasons:

- Antigua and Barbuda does not have access to confidential information held by certain legal entities;
- In Barbados, the competent authorities have no powers to obtain confidential information covered by the International Trust Act and the Mutual Funds Act for exchange purposes.
- In Belize, the competent authorities only have access to bank information in criminal tax matters;
- Dominica has not provided any information regarding powers of competent authority to access bank information;

9. The full EOI Article in the CARICOM treaty reads "(1) The competent authorities of the Member States shall exchange such information as is necessary for the carrying out of this Agreement and of the domestic laws of the Member States concerning taxes covered by this Agreement in so far as the taxation there under is in accordance with this Agreement. Any information so exchanged shall be treated as secret and shall only be disclosed to persons or authorities including Courts and other administrative bodies concerned with the assessment or collection of the taxes which are the subject of this Agreement. Such persons or authorities shall use the information only for such purposes and may disclose the information in public court proceedings or judicial decisions.

(2) In no case shall the provisions of paragraph 1 be construed so as to impose on one of the Member States the obligation: (a) to carry out administrative measures at variance with the laws or the administrative practice of that or/of the other Member States; (b) to supply particulars which are not obtainable under the laws or in the normal course of the administration of that or of the other Member States; (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process the disclosure of which would be contrary to public policy".

- Grenada has enacted an new EOI Act providing for EOI to the international standard, however the CARICOM tax treaty is not a scheduled agreement to the Act, meaning that the information gathering powers under Grenada's EOI Act does not apply to the CARICOM tax treaty;
- For Guyana, there is no information available about competent authorities' powers to access bank information or to access ownership, identity and accounting information for the purpose of exchange of information, so it is not possible to confirm that for the purposes of the CARICOM tax treaty it can meet the obligations of the international standards;
- Jamaica has a domestic tax interest applicable when exercising its compulsory access powers;
- Saint Kitts and Nevis has enacted the Saint Christopher and Nevis (Mutual Exchange of Information on Tax Matters) Act 2009 which provides that all types of information may be obtained and shared with treaty partners (civil as well as criminal);
- Saint Vincent and the Grenadines does not have any restrictions in its powers to access information for EOI purposes, including bank information;
- Trinidad and Tobago are only able to access information for the purpose of their TIEAs with the United States, therefore, they will not be able to exchange all information under the CARICOM agreement;

224. It is recommended that Saint Lucia work with those signatories to the CARICOM tax treaty to ensure exchange of information to the standard can occur.

Absence of domestic tax interest (ToR C.1.4)

225. The concept of "domestic tax interest" describes a situation where a contracting party can only provide information to another contracting party if it has an interest in the requested information for its own tax purposes. An inability to provide information because of a domestic tax interest requirement is not consistent with the international standard. Contracting parties must use their information gathering measures even though invoked solely to obtain and provide information to the other contracting party.

226. All of Saint Lucia's TIEAs explicitly require the parties to use all relevant information gathering measures to provide the requested information requested, notwithstanding that it may not be required for a domestic tax purpose. Of the parties to the CARICOM tax treaty, both Jamaica and

Trinidad and Tobago can obtain information only from taxpayers who are under examination or in the course of their assessment. These domestic tax interests could be an obstacle to the effective exchange of information and are not in line with the international standard.

227. There is some uncertainty over the interpretation of Saint Lucia's general access powers, as described in Part B.1 of the report, in terms of whether they include a domestic tax interest requirement. A recommendation has been made for Saint Lucia to clarify its ability to access all relevant information for EOI purposes.

Absence of dual criminality principles (ToR C.1.5)

228. The principle of dual criminality provides that assistance can only be provided if the conduct being investigated (and giving rise to an information request) would constitute a crime under the laws of the requested country if it had occurred in the requested country. In order to be effective, exchange of information should not be constrained by the application of the dual criminality principle.

229. None of Saint Lucia's TIEAs or the CARICOM tax treaty applies the dual criminality principle to restrict the exchange of information.

Exchange of information in both civil and criminal tax matters (ToR C.1.6)

230. Information exchange may be requested both for tax administration purposes and for tax prosecution purposes. The international standard is not limited to information exchange in criminal tax matters but extends to information requested for tax administration purposes (also referred to as "civil tax matters").

231. All of the TIEAs signed by Saint Lucia and the CARICOM tax treaty provide for the exchange of information in both civil and criminal tax matters.

Provide information in specific form requested (ToR C.1.7)

232. In some cases, a Contracting State may need to receive information in a particular form to satisfy its evidentiary or other legal requirements. Such forms may include depositions of witnesses and authenticated copies of original records. Contracting States should endeavour as far as possible to accommodate such requests. The requested State may decline to provide the information in the specific form requested if, for instance, the requested form is not known or permitted under its law or administrative practice. A refusal

to provide the information in the form requested does not affect the obligation to provide the information.

233. All of the TIEAs signed by Saint Lucia expressly allow for information to be provided in the specific form requested, to the extent allowable under the requested jurisdiction's domestic laws. In addition, there are no restrictions in the CARICOM tax treaty or Saint Lucia's own domestic laws which would prevent it from providing information in a specific form, so long as this is consistent with its own administrative practices.

In force (ToR C.1.8)

234. Exchange of information cannot take place unless a jurisdiction has exchange of information arrangements in force. Where exchange of information agreements have been signed, the international standard requires that jurisdictions must take all steps necessary to bring them into force expeditiously.

235. Most of the TIEAs signed by Saint Lucia, as well as the CARICOM tax treaty, have been brought into force, with the notable exception of the TIEA with the United States.[10]

Be given effect through domestic law (ToR C.1.9)

236. For exchange of information to be effective, the contracting parties must enact any legislation necessary to comply with the terms of the agreement.

237. Saint Lucia has generally enacted all the legislation necessary to comply with the terms of its agreements. In particular, section 6 of the Income Tax Act expressly provides that the obligation to maintain the secrecy of tax information is lifted to allow the disclosure of information necessary for the purposes of an EOI agreement. In Part B of the report, it is recommended that Saint Lucia clarify its domestic law in respect of its general access powers and capacity to access information regarding International Trusts.

10. The United States TIEA with Saint Lucia was signed on 30 January 1987. On 15 December 2004, the United States Competent Authority was orally informed by the government of Saint Lucia that the TIEA did not have the force of law in Saint Lucia as it was never passed into law by Parliament. The Saint Lucia TIEA with the United States was not considered during the review of the United States.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place., but with certain aspects of its legal implementation needing improvement	
Factors underlying recommendations	**Recommendations**
Exchange of information under all of Saint Lucia's EOI agreements may be limited by the uncertainty concerning the existence of a domestic tax interest in the general access power of section 87(1) of the Income Tax Act. There is however no domestic tax interest with respect the power to access bank information.	Saint Lucia should take steps to clarify its general powers to access information for EOI purposes notwithstanding the absence of a domestic tax interest in the information.
Saint Lucia's agreements do not in all cases provide for exchange of information to the standard due to impediments to exchange of information in some of the signatories domestic laws.	Saint Lucia should work with the relevant treaty partners to ensure that these restrictions are removed to permit the effective exchange of information.

C.2. Exchange-of-information mechanisms with all relevant partners

The jurisdictions' network of information exchange mechanisms should cover all relevant partners.

238. Ultimately, the international standard requires that jurisdictions exchange information with all relevant partners, meaning those partners who are interested in entering into an information exchange arrangement. Agreements cannot be concluded only with counterparties without economic significance. If it appears that a jurisdiction is refusing to enter into agreements or negotiations with partners, in particular ones that have a reasonable expectation of requiring information from that jurisdiction in order to properly administer and enforce its tax laws it may indicate a lack of commitment to implement the standards.

239. Saint Lucia's main trading partners are Brazil, the United States, and the other CARICOM countries, in particular Trinidad and Tobago. External direct investments in Saint Lucia (that is, from countries outside CARICOM and the ECCU) derive mainly from Canada, the United States, the United Kingdom, Venezuela and Hong Kong (China).

240. Saint Lucia has signed EOI arrangements with 31 jurisdictions. Twenty-eight of those agreements have entered into force, and a complete list of its EOI

agreements including their dates of signature and entry into force can be found in Annex 2.

241. Saint Lucia's network of EOI arrangements includes:

- 28 Global Forum members; and
- 15 OECD members.

242. Saint Lucia is currently negotiating 6 additional TIEAs. Also, in April 2010 Saint Lucia invited Italy to enter into negotiations to conclude a TIEA and Italy has advised that it is evaluating this possibility. Comments were sought from Global Forum members in the course of the preparation of this report and no jurisdiction advised that Saint Lucia had refused to negotiate or conclude an EOI arrangement with it.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place.	
Factors underlying recommendations	**Recommendations**
	Saint Lucia should continue to develop its exchange of information network with all relevant partners.

C.3. Confidentiality

The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received.

Information received: disclosure, use, and safeguards (ToR C.3.1)

243. Governments would not engage in information exchange without the assurance that the information provided would only be used for the purposes permitted under the exchange mechanism and that its confidentiality would be preserved. Information exchange instruments must therefore contain confidentiality provisions that spell out specifically to whom the information can be disclosed and the purposes for which the information can be used. In addition to the protections afforded by the confidentiality provisions of information exchange instruments, jurisdictions with tax systems generally impose strict confidentiality requirements on information collected for tax purposes.

244. All of Saint Lucia's EOI arrangements include provisions to protect the confidentiality of information exchanged pursuant to those arrangements which are in line with the international standard. Saint

245. In some agreements, provisions are included to take into account additional confidentiality obligations. Saint Lucia's TIEAs with Belgium, Denmark and the Netherlands (art. 8.2) require that the parties conform to Chapter 6 of the Economic Partnership Agreement between the Cariforum States and the European Community and its Member States of 15 October 2008. The Economic Partnership Agreement concerns the protection of information of identified or identifiable individuals. Chapter 6, in particular article 199 of that agreement outlines principles and general rules relating to information exchange. Importantly, these principles note that *(i)* information should only be used as authorised by the sending party; and *(ii)* persons to whom the information concerns (*e.g.* the subject of an EOI request) have a right to receive all information related to them, except where it is in the public interest not to allow this.

246. In its domestic law, the secrecy of information exchanged under an EOI arrangement is protected by section 6 of the Income Tax Act. That section provides:

> the Comptroller and every person employed in carrying out the provisions of or having any official duty under this Act shall regard and deal with all documents and information relating to any person, and all confidential instructions in respect of the administration of this Act which may come into his or her possession or to his or her knowledge in the course of his or her duties, as secret.

247. Every person subject to this obligation must make an oath or affirmation of secrecy (s6(4), Income Tax Act) and the obligation to maintain the secrecy of the information continues notwithstanding the person ceases to be employed or have any official duties under the Act (s6(6), Income Tax Act).

248. Any person who contravenes the secrecy provisions in the Income Tax Act commits an offence and is liable to a fine of ECD1 000 or imprisonment of one year (s139(b), Income Tax Act).

All other information exchanged (ToR C.3.2)

249. The confidentiality provisions in Saint Lucia's exchange of information agreements and domestic tax law do not draw a distinction between information received in response to requests and information forming part of the requests themselves. As such, these provisions apply equally to information received and provided under an EOI agreement, including background documents to EOI

requests which may be provided by the requesting state, and any documents recording communications between the requesting and requested states.

Determination and factors underlying recommendations

Phase 1 determination
The element is in place

C.4. Rights and safeguards of taxpayers and third parties

The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties.

Exceptions to requirement to provide information (ToR C.4.1)

250. The international standard allows requested parties not to supply information in response to a request in certain identified situations where an issue of trade, business or other secret may arise. Among other reasons, an information request can be declined where the requested information would disclose confidential communications protected by the attorney-client privilege. Attorney-client privilege is a feature of the legal systems of many jurisdictions.

251. However, communications between a client and an attorney or other admitted legal representative are, generally, only privileged to the extent that the attorney or other legal representative acts in his or her capacity as an attorney or other legal representative. Where attorney-client privilege is more broadly defined it does not provide valid grounds on which to decline a request for exchange of information. To the extent, therefore, that an attorney acts as a nominee shareholder, a trustee, a settlor, a company director or under a power of attorney to represent a company in its business affairs, exchange of information resulting from and relating to any such activity cannot be declined because of the attorney-client privilege rule.

252. Each of Saint Lucia's TIEAs and its DTC with Switzerland contains a provision that the requested state is not obliged to provide certain information such as professional or trade secrets, or where the disclosure of the information would be contrary to public policy. These provisions are in line with the international standard described in Article 7(2) of the OECD Model TIEA and Article 26(3)(c) of the OECD Model Tax Convention. Also, the OECD Model TIEA provides that the rights and safeguards of persons remain applicable "to the extent that they do not unduly prevent or delay effective exchange of information", and Saint Lucia's TIEAs generally follow this model although its agreements with Portugal and the USA do not expressly contain such a provision.

253. In the CARICOM tax treaty, the provision equivalent to Article 26(3)(c) of the OECD Model Tax Convention (Article 24(2)(c)) is cumulative, that the requested state is not obliged to supply information "which would disclose any trade, business, industrial, commercial or professional secret or trade process *the disclosure of which* would be contrary to public policy" (*emphasis added*). These grounds for declining to provide information are therefore even narrower than those contemplated under the international standard.

254. Notwithstanding the provisions in Saint Lucia's EOI agreements, under the domestic law, the scope of legal privilege (as attorney-client privilege is referred to in Saint Lucia) is very broad, and would include for instance, communications between a lawyer and his client even when the lawyer is not providing legal advice. This is not consistent with the standard, and may prevent the exchange of relevant information under Saint Lucia's EOI agreements.

255. Also, it is not clearly expressed that the Comptroller could access confidential information relating to an International Trust. In Part B.1, a recommendation is made for Saint Lucia to clarify the Comptroller's powers in that regard.

Determination and factors underlying recommendations

Phase 1 determination	
The element is in place but certain aspects of the legal implementation of the element need improvement.	
Factors underlying recommendations	**Recommendations**
The scope of legal privilege under Saint Lucia's domestic law is broad, and includes information where a lawyer is acting in a fiduciary, agency or nominee capacity. This definition is applicable for EOI purposes, and is the scope of the privilege is not consistent with the international standard.	Saint Lucia should take steps to ensure that the scope of legal privilege in its domestic law does not prevent the exchange of information as required for under its EOI agreements and the international standard.

C.5. Timeliness of responses to requests for information

The jurisdiction should provide information under its network of agreements in a timely manner.

Responses within 90 days (ToR C.5.1)

256. In order for exchange of information to be effective it needs to be provided in a timeframe which allows tax authorities to apply the information to the relevant cases. If a response is provided but only after a significant lapse of time the information may no longer be of use to the requesting authorities. This is particularly important in the context of international co-operation as cases in this area must be of sufficient importance to warrant making a request.

257. There are no specific legal or regulatory requirements in place which would prevent Lucia responding to a request for information by providing the information requested or providing a status update within 90 days of receipt of the request. However, as regards the timeliness of responses to requests for information the assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

Organisational process and resources (ToR C.5.2)

258. Saint Lucia's legal and regulatory framework relevant to exchange of information for tax purposes is presided over by the Minister of Finance or the Minister's authorised representative. In the case of Saint Lucia, this representative is the Comptroller of the Inland Revenue.

259. A review of Saint Lucia's organisational process and resources will be conducted in the context of its Phase 2 review.

Absence of restrictive conditions on exchange of information (ToR C.5.3)

260. Exchange of information assistance should not be subject to unreasonable, disproportionate, or unduly restrictive conditions. As noted in Part B of this Report, there are no aspects of Saint Lucia's domestic laws that appear to impose additional restrictive conditions on exchange of information.

Determination and factors underlying recommendations

Phase 1 determination
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.

Summary of Determinations and Factors Underlying Recommendations

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that ownership and identity information for all relevant entities and arrangements is available to their competent authorities *(ToR A.1)*		
The element is in place.	The obligation for a company formed under the laws of another CARICOM or OECS member state, but carrying on business in Saint Lucia, to ensure the availability of ownership information is not clear.	Saint Lucia should ensure that for companies formed under the laws of a CARICOM or OECS member state and carrying on business in Saint Lucia, there are clear obligations for ownership information to be maintained.

Determination	Factors underlying recommendations	Recommendations
Jurisdictions should ensure that reliable accounting records are kept for all relevant entities and arrangements *(ToR A.2)*		
The element is not in place.	International Business Companies are exempt from the record-keeping obligations of the Income Tax Act, and otherwise are only required to keep such accounting records as their directors think fit. Pursuant to the AML regime, some relevant accounting records for transactions conducted by the IBC through their registered agent or other AML Service Provider will be required to be kept. However this will not ensure all relevant accounting records are maintained.	Saint Lucia should introduce requirements to ensure that IBCs are in all instances subject to requirements to keep relevant accounting records, including underlying documentation, for a minimum five year period.
	International Partnerships are exempt from the record keeping requirements of the Income Tax Act. They will only be subject to the accounting record obligations established by the Commercial Code which requires partners to render "true accounts and full information" of all things affecting the partnership. There is no express requirement to keep such records for any minimum period of time. Pursuant to the AML regime, some relevant accounting records will be required to be kept in respect of the transactions conducted by the International Partnership through its registered agent or other AML Service Provider. However this will not ensure all relevant accounting records are maintained.	Saint Lucia should ensure that International Partnerships are subject to a requirement to keep reliable accounting information, including underlying documentation for a minimum period of five years.
	Trusts will be subject to the common law obligations to keep records relating to the trust, although the scope of those accounting record obligations were not ascertainable. Further, certain ordinary trusts will also be subject to the Income Tax record-keeping obligations. Trusts which engage an AML Service Provider will be required to keep some relevant accounting records, however these obligations will not ensure that all relevant accounting information is kept in respect of trusts created under the laws of Saint Lucia, or which are administered from or have a trustee resident in Saint Lucia.	Saint Lucia should ensure that trusts which are established under its laws, administered from, or with a trustee resident in Saint Lucia, are subject to requirements in all instances to keep reliable accounting information, including underlying documentation for a minimum period of 5 years.

Determination	Factors underlying recommendations	Recommendations
Banking information should be available for all account-holders *(ToR A.3)*		
The element is in place		
Competent authorities should have the power to obtain and provide information that is the subject of a request under an exchange of information arrangement from any person within their territorial jurisdiction who is in possession or control of such information (irrespective of any legal obligation on such person to maintain the secrecy of the information) *(ToR B.1)*		
The element is in place, but with certain aspects of the legal implementation of the element needing improvement.	It is unclear from the wording of the Comptroller's general access power under section 87(1) whether the power permits access even though there may be no domestic tax interest in the information.	Saint Lucia should clarify the Comptroller's powers to access all relevant information, regardless of the existence of a domestic tax interest in that information.
	It is not unequivocally established that the Comptroller would be a person "legally entitled" to access confidential information pertaining to International Trusts.	Saint Lucia should clarify that the Comptroller will be a person "legally entitled" to access information regarding International Trusts, notwithstanding the general obligation of confidentiality which applies to such information.
	Attorney-client privilege protects all the secrets and confidences of an attorney's client. This would cover information more broadly than the international standard which is restricted to communications produced for the purposes of seeking or providing legal advice, or use in existing or contemplated legal proceedings.	Saint Lucia should ensure that the scope of attorney-client privilege in domestic law permits access to relevant information otherwise protected by the privilege, to the extent required under the international standard.
The rights and safeguards (*e.g.* notification, appeal rights) that apply to persons in the requested jurisdiction should be compatible with effective exchange of information *(ToR B.2)*		
The element is in place.		

Determination	Factors underlying recommendations	Recommendations
Exchange of information mechanisms should allow for effective exchange of information *(ToR C.1)*		
The element is in place, but with certain aspects of its legal implementation needing improvement.	Exchange of information under all of Saint Lucia's EOI agreements may be limited by the uncertainty concerning the existence of a domestic tax interest in the general access power of section 87(1) of the Income Tax Act. There is however no domestic tax interest with respect the power to access bank information.	Saint Lucia should take steps to clarify its general powers to access information for EOI purposes notwithstanding the absence of a domestic tax interest in the information.
	Saint Lucia's agreements do not in all cases provide for exchange of information to the standard due to impediments to exchange of information in some of the signatories domestic laws.	Saint Lucia should work with the relevant treaty partners to ensure that these restrictions are removed to permit the effective exchange of information.
The jurisdictions' network of information exchange mechanisms should cover all relevant partners *(ToR C.2)*		
The element is in place.		Saint Lucia should continue to develop its exchange of information network with all relevant partners.
The jurisdictions' mechanisms for exchange of information should have adequate provisions to ensure the confidentiality of information received*(ToR C.3)*		
The element is in place.		
The exchange of information mechanisms should respect the rights and safeguards of taxpayers and third parties *(ToR C.4)*		
The element is in place, but certain aspects of the element need improvement.	The scope of legal privilege under Saint Lucia's domestic law is broad, and includes information where a lawyer is acting in a fiduciary, agency or nominee capacity. This definition is applicable for EOI purposes, and is the scope of the privilege is not consistent with the international standard.	Saint Lucia should take steps to ensure that the scope of legal privilege in its domestic law does not prevent the exchange of information as required for under its EOI agreements and the international standard.
The jurisdiction should provide information under its network of agreements in a timely manner *(ToR C.5)*		
The assessment team is not in a position to evaluate whether this element is in place, as it involves issues of practice that are dealt with in the Phase 2 review.		

Annex 1: Jurisdiction's Response to the Review Report*

Saint Lucia acknowledges the significant effort and cooperation of the assessment team and in particular Ms. Caroline Malcolm who spared no effort to consult and seek clarification when needed. We also thank the Peer Review Group members for the richly rewarding and stimulating debate which ensued. The findings of the report have been duly noted. Accordingly Saint Lucia submits as follows:

- In keeping with the Caribbean Community Act, Cap 19.21, and the Caribbean Community (Movement of Factors) Act, Cap 10.12, of the Laws of Saint Lucia, CARICOM Companies within the scope of these agreements are entitled (Right of Establishment) to enjoyment of the same rights, privileges and obligations as locally incorporated companies. Nothing can be found in Saint Lucia Statute exempting these companies from the requirement to submit ownership information to the Registrar of Companies. Therefore the finding of the report that there is a " is lack of a clear requirement for companies carrying on business in Saint Lucia which were incorporated in one of the member states of CARICOM/OECS to submit ownership information to the Registrar of Companies is factually incorrect;
- Attorney-Client-Privilege ought appropriately to be interpreted with due regard to both Part A (the general norms of the Profession) and Part B (Mandatory Provisions and Specific Prohibitions) as to do otherwise will lead to false conclusion. As matters stand, there is no blanket Attorney-Client privilege. It is a mandatory requirement of the Legal Profession Act that the Attorney at Law maintains the privilege unless ordered by an Order of the Court or by the provisions of a statute to disclose information given to him or her by a client. A breach of this mandatory requirement shall constitute professional misconduct. (See section 35(2)(b) of the Legal Procession Act in conjunction with section 18 of Part B of Schedule 3 of the Legal Profession Act);

* This Annex presents the Jurisdiction's response to the review report and shall not be deemed to represent the Global Forum's views.

- Notwithstanding our conviction of the adequacy of our legislative environment, and for the removal of any possible doubt, we have worked assiduously to legislate an International Tax Cooperation Act which will strengthen the legal bases of our commitments and remove any perceived shortcomings thereof; the Bill having had first reading on May 11, 2012 is scheduled for second and third reading at the next sitting of parliament after which it will become Law; and
- We have executed an amendment to Schedule 3 (Form 24) of the Companies Regulations thereby ensuring the availability of information on the share capital of an external company; said shareholder information comprising; the list of persons who have held shares in the company on 31 December 2011and of persons who have held shares therein at any time since the date of the last return or (in the case of first return) of incorporation or continuance of the company showing their names and addresses and an account of the shares so held.

As the integrity of our jurisdiction is paramount, we will continue to demonstrate our unflinching support for the commitment to implement and comply with the international standard.

Annex 2: List of All Exchange-of-Information Mechanisms in Force

No.	Jurisdiction	Type of EOI agreement	Date signed	Date In force
1	Antigua and Barbuda	CARICOM tax treaty	July 1994*	Nov 1994
2	Aruba	TIEA	May 2010	Oct 2011
3	Australia	TIEA	March 2010	Jan 2011
4	Barbados	CARICOM tax treaty	July 1995*	Nov 1994
5	Belgium	TIEA	Dec 2009	Nov 2011
6	Belize	CARICOM tax treaty	July 1994*	Nov 1994
7	Canada	TIEA	June 2010	
8	Curaçao	TIEA	Oct 2009	Oct 2011
9	Denmark	TIEA	Dec 2010	Oct 2011
10	Dominica	CARICOM tax treaty	July 1994*	Nov 1994
11	Faroe Islands	TIEA	May 2010	Oct 2011
12	Finland	TIEA	May 2010	Oct 2011
13	France	TIEA	April 2010	Jan 2011
14	Germany	TIEA	June 2010	Jan 2011
15	Greenland	TIEA	May 2010	Oct 2011
16	Grenada	CARICOM tax treaty	July 1994*	Nov 1994
17	Guyana	CARICOM tax treaty	July 1994*	Nov 1994
18	Iceland	TIEA	May 2010	Oct 2011
19	Ireland	TIEA	Dec 2009	Jan 2011
20	Jamaica	CARICOM tax treaty	Dec 2009	Jan 2011
21	Netherlands	TIEA	Dec 2009	Jan 2011
22	Norway	TIEA	May 2010	Oct 2011
23	Portugal	TIEA	July 2010	Oct 2011

No.	Jurisdiction	Type of EOI agreement	Date signed	Date In force
24	Saint Kitts and Nevis	CARICOM tax treaty	July 1994*	November 1994
25	Saint Vincent and the Grenadines	CARICOM tax treaty	July 1994*	November 1994
26	Sint Martin	TIEA	Oct 2009	Oct 2011
27	Sweden	TIEA	May 2010	
28	Switzerland	DTC	Aug 1963**	Jan 1961
29	Trinidad and Tobago	CARICOM tax treaty	July 1995*	November 1994
30	UK	TIEA	Jan 2010	Jan 2011
31	USA	TIEA	Jan 1987	

* The later of the dates the CARICOM tax treaty was signed by Saint Lucia or the partner jurisdiction.

** Date of exchange of notes, extending DTC signed in 1954 between UK and Switzerland, to Saint Lucia.

Annex 3: List of all Laws, Regulations and other Relevant Material

Commercial Laws

Commercial Code

Companies Act

International Business Companies Act (IBC Act).

International Partnerships Act

International Trusts Act 2006 (Trust Act)

Trust Corporation (Probate and Administration) Act (TCPAA)

Registered Agents and Trustee Licensing Act (RATLA)

Cooperative Societies Act

Taxation Laws

Income Tax Act

Banking Laws

Banking Act 2006

International Banks Act

Anti-Money Laundering Laws

Money Laundering (Prevention) Act (MLPA)

Money Laundering (Prevention) (Guidance Notes)

Guidelines in the Schedule to the Money Laundering (Prevention) (Guidance Notes) Regulations (MLPGNR).

Other Laws

Constitution of Saint Lucia

Civil Code

International Insurance Act

International Mutual Funds Act

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Global Forum on Transparency and Exchange of Information for Tax Purposes

PEER REVIEWS, PHASE 1: SAINT LUCIA

The Global Forum on Transparency and Exchange of Information for Tax Purposes is the multilateral framework within which work in the area of tax transparency and exchange of information is carried out by over 100 jurisdictions which participate in the work of the Global Forum on an equal footing.

The Global Forum is charged with in-depth monitoring and peer review of the implementation of the standards of transparency and exchange of information for tax purposes. These standards are primarily reflected in the 2002 OECD *Model Agreement on Exchange of Information on Tax Matters* and its commentary, and in Article 26 of the OECD *Model Tax Convention on Income and on Capital* and its commentary as updated in 2004, which has been incorporated in the UN *Model Tax Convention*.

The standards provide for international exchange on request of foreseeably relevant information for the administration or enforcement of the domestic tax laws of a requesting party. "Fishing expeditions" are not authorised, but all foreseeably relevant information must be provided, including bank information and information held by fiduciaries, regardless of the existence of a domestic tax interest or the application of a dual criminality standard.

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